Supreme Court, U.S.
FILED

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No. _____

In the
SUPREME COURT OF THE UNITED STATES

October Term, 2008

In re SUSAN V. KLAT, *Petitioner,*

vs.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT, *Respondent,*

MITCHELL REPAIR INFORMATION COMPANY,
LLC AND SNAP-ON INCORPORATED,

Real Party[s] of Interest.

**ON PETITION FOR EXTRAORDINARY WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT TO COMPEL COURT TO REINSTATE ORDER NECESSARY TO ALLOW PETITIONER TO PROCEED ON APPEAL**

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*Petitioner in Propria Persona*

## QUESTIONS PRESENTED FOR REVIEW

On October 16, 2008, while still employed by Snap-on Inc. and working as the primary receptionist and switchboard operator and with the consistent expectation the position perform duties equal in skill, effort, labor and responsibility as that of similar positions within the company but at a substantially lesser rate of pay, the petitioner filed a verified complaint against the company in district court for wage discrimination with the 7–page pleading specific to the inequity in pay with jurisdiction invoked under 28 U.S.C. Section 206 (d) and The Equal Pay Act.

Following a 6–month series of rulings defending differences in the use of a deposition and whether the proceeding could be used as a way to threaten and or recruit information known to the corporation through terms of employment as in this case, the complaint was dismissed by the court and with knowledge the magistrate recommendations could not be adopted or utilizing pursuant to 28 U.S.C. Section 454 provisions which prohibit a judge from maintaining or being in possession of an active license to practice law.

On July 31, 2009, in response to the notice of appeal filed on July 15, 2009, the court of appeal **ordered** the appellant to Show Cause rather than brief the material and without the court first accessing the record or information necessary to the review citing 9th Circuit Rule 3.6(b) as the authority allocated to summarily dispense with the appeal before the matter could be briefed for review. ***Question presented***

1. Can a court of appeal ***sua sponte*** review a case timely scheduled/docketed for appellate review in the absence of a lower court record and/or forerunner brief presentation necessary to the merits prompting the review by issuing an order to show cause to elude summoning essential material relevant to the review?

## LIST OF PARTIES

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*Defendants/Appellees*

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*For Real Party[s] of Interest*

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In the
SUPREME COURT OF THE UNITED STATES

October Term, 2008

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In re SUSAN V. KLAT, *Petitioner,*

vs.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT, *Respondent,*

---

MITCHELL REPAIR INFORMATION COMPANY,
LLC and SNAP-ON INCORPORATED,
Real Party[s] of Interest.

---

**ON PETITION FOR EXTRAORDINARY WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

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This is a Petition for Mandamus and/or Writ of Prohibition brought by Susan V. Klat, *pro se*, with the petitioner previously known to this Court through proceedings introduced in 1996 by way of petition for writ of certiorari following a premature processing of a notice of appeal back then initiated by the same two lower courts now attempting to exclude the plaintiff from accessing review of a disposition ruling correctly before the court of appeals, which involves a wage discrimination dispute between the plaintiff and her now former employer, Snap-on Incorporated, with the claim brought in the United States District Court for the Southern of California under 28 U.S.C. § 206 (d) and The Equal Pay Act.

## ORDERS ISSUED BELOW

The Order relevant to this proceeding (which is distinct and separate from the merits and reasons applicable should it later become necessary to seek further review) was issued by the clerk of the court on behalf of the United States Court of Appeals for the Ninth Circuit on July 31, 2009 (App., *infra*, 1a). The Timing Schedule Order related to the appeal and to this petition in which the petitioner seeks to be reinstated to address the material relevant to the district court ruling under review was also issued by the clerk on behalf of the court of appeals on July 16, 2009 (App., *infra*, 4a – 5a).

## JURISDICTION

The jurisdiction of this Court to issue a writ in aid of compelling the court of appeals to reinstate the July 16, 2009 initiating timing schedule order necessary to the briefing and lodgment of the district court record accompanying the lower court decision and judgment entered on July 14, 2009 is predicated upon Title 28 U.S. Code §1651 (a).

In accordance with the judgment entered in this case on July 14, 2009 (App., *infra*, 7a), followed by the notice of appeal filed on July 15, 2009 (App., *infra*, 6a), jurisdiction of the court of appeals is timely invoked pursuant to rule 3 of Federal Rules of Appellate Procedure and Title 28 U.S. Code § 1291.

## STATUTORY PROVISIONS INVOLVED

Title 28 U.S. Code §1651(a) recites "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Section (b) of this code confers "An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction."

The Ninth Circuit Rule 3–6 (summary disposition on civil appeals) originating and unique to the ninth circuit court of appeals states, in relevant part, "At any time **prior** to the completion of briefing in a civil appeal if the court determines...: (b) that it is manifest that the questions on which the decision in the appeal depends are so insubstantial as not to justify further proceedings the Court may, after affording the parties an opportunity to show case, issue an order dismissing the appeal without notice or further proceedings." *(Eff. 07/1995)*

Supreme Court Rule 20(1) (procedure on a petition for an extraordinary writ) conveys, in relevant part, "Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction; that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

Pursuant to Title 28 U.S. Code Section 454 provision requirement herein referenced in this petition to convey relevance to the material underlying the district court ruling which affects the case disposition and acceptance of the practice in question and in mention before the court of appeals dictates, "Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor."

## STATEMENT OF CASE

*A. Events Preceding Access to Appeal.*

On October 16, 2008, while still employed at Mitchell Repair Information Company, LLC (a subsidiary owned by Snap-on Incorporated) the petitioner, Susan Klat, then working for 8 years as the San Diego company's front desk receptionist and switchboard operator and for a 2008/2009 rate of pay of $11.65/hour and with the consistent expectation the position perform duties equal in skill, effort, labor and responsibility as that of similarly situated positions within the location but for a substantially lesser of rate of pay, filed a verified complaint against the corporation for the practice of wage discrimination (with the 7 page claim specific to the disparity in pay in relation to duties performed) with federal jurisdiction invoked under Title 28 U.S. Code Section 206(d) and The Equal Pay Act. [1]

On December 29, 2008, following necessity to serve the defendants' twice due to the noncompliance with return of the waiver of summons paperwork in accordance with rule 4 of the Federal Rules of Civil Procedure cost reduction act, the corporation filed

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[1] On August 30, 2008 plaintiff filed a complaint with the California Department of Labor Relations with material contents forwarded to the U.S. Equal Employment Opportunity Commission reporting various employment violations with explicit documentation attached, which included the wage inequity/discrimination complained with neither agency wanting to take action prompting the lawsuit to be filed in accordance with guided timelines to act.

a verified answer expressing a generalized denial in response to the wage inequities distribution complained, adding to the complaint the aspect of fraud by reciting (through a verified return) that the plaintiff was **NOT** an employee of Snap-on Incorporated (despite the name on her bimonthly paystub and annual tax return) to sidestep the corporation having to make a personal appearance at the early natural evaluation hearing calendared on December 30, 2008 upon electronic docketing of the defendants' reply, with the proceeding scheduled for hearing on February 12, 2009.

On January 27, 2009, in accordance with the December 30, 2008 court directive conveying "if any questions please contact the clerk for the judge assigned," the petitioner forwarded correspondence to the appointed magistrate's docketing clerk to inquire into Snap-on's presence at the forthcoming hearing given the "she doesn't belong to us" affirmative response; and on February 02, 2009 the contents were returned and with the plaintiff admonished for the voiced concern, and with Snap-on later excused and without mention from the court as to why the corporation was allowed to violate the mandatory order to appear as originally prescribed.

On March 19, 2009, pursuant to court initiated deadlines, plaintiff served a written notice requesting wage–claim related discovery material encasing pertinent non–confidential employee salary records with specific names, company job descriptions of similar positions exclusive to the inequity in wage in relation to duties in addition to the demand for production of business telephone logs reflecting daily call volumes passed to the operator in relation to other the departments described; and all of which

directly illustrate the petitioner's effort, skill, labor, and responsibility in association to other company positions in question thereby validating the earnings disparity complained; and on March 23, 2009 defendants' written response was returned with counsel citing more time needed to meet the relevant entries request per corporation to counsel conveyed response.

On April 02, 2009, pending corporation compliance with the previous court order regulating party cooperation with discovery exchange, a case management conference was telephonic conducted with trial dates "symbolically" assigned (and with no customary digital recording created or subsequent order reflecting the hearing's objections voiced); and on April 13, 2009 the plaintiff appealed the order by objection with the pleading forwarded to the district court judge pursuant to Federal Rules of Civil Procedure 72(a) (10–day rule guideline) to preserve proper documentation in the likelihood of a later needed record supporting an appeal.

On April 09, 2009, following the conference hearing but before the plaintiff's objections could be formally recognized, petitioner was served by U.S. mail with a notice of the corporation's intent to depose the plaintiff for the supposed purpose of securing wage related/job performance information already known to the defendants' by virtue of conditions of employment advanced; with the deposition scheduled in closed chambers of the district courthouse (and for 7 hours prompting an inquiry into the reasons and time needed in addition to the location assigned) and with the provision the proceeding be conducted under the supervision of the acting magistrate (despite corporate headquarters

having the means to house and conduct the proceeding at any given time), with the event tentatively calendared for April 29, 2009.

On April 15, 2009, following the district court acceptance of the plaintiff objection initially withheld for "irregularities" not relevant to the application applied (objection stamped received on April 13, 2009 but not filed), defendants contacted the plaintiff seeking a joint party stipulation protective order agreement to repress company wage inequities from being made public despite the information having already been well–advertised; and with knowledge the request sought would infringe on miscellaneous labor provisions created for employee protection originating under California State law.

On April 20, 2009 defendants' filed a response to the insufficient findings objection with separate documents forwarded to the petitioner conveying the corporation's refusal to produce previously solicited employment/wage related material guided under Rule 26 discovery exchange, citing company "belief" that business telephone activity logs and non-confidential employee salary records thought to be immaterial to the solely stated earnings inequities complained thereby nullifying any need for a deposition given the generalized acceptance "she doesn't work for Snap-on and nothing wage related applies" all–encompassing defense.

On April 22, 2009, and in part due to the defendants stanch refusal to relocate the deposition proceeding, agree to an nonthreatening impartial territory to meet, consideration and or use of alternative means or to submit to a reasonable pre-deposition outline, the plaintiff initiated a document stating numerous reasons for a nonappearance at the

deposition then calendared in chambers of the magistrate judge assigned; citing the district court's 1995 initiating events as the ultimate supporting grounds for the unyielding decline **and** with alternative suggestions proffered to the proceeding (including an F.B.I. invite), which both the magistrate judge and corporation refused to entertain referencing a reserved right to decide.

On April 28, 2009 the district court judge overruled all objections to the magistrate findings and without addressing the material supporting the reasons behind the plaintiff deposition decline, and with full knowledge of the district court's past related safety and intimidation tactic concerns devoid of a review for relocation of the deposition, consideration of written interrogatories and or benefits of a telephone or "other" alternative means as proffered in lieu of the decline, citing "defendants" preference as the foundation to endorse the sequestered harassment thereby leaving more questions to the unspoken agenda generating the unconditional judicial support being advertised.

On April 29, 2009 defendants filed an ex-parte application to compel plaintiff attendance at the requested location specific to the isolated courtroom of the acting magistrate judge assigned with an added request for sanctions due to counsel inconvenience complained with the court ordering a plaintiff response to be filed on or before May 06, 2009.

On May 06, 2009 plaintiff filed an opposition with attachments in response to the ex–parte application to compel attendance to the deposition advance (with the corporation retaliating some 4.5 hours after document lodgment with the district

court by terminating the plaintiff's position of employment claiming excessive utilization of company "resources" as the reason behind the immediate discharge) with the magistrate judge (within hours of the termination) granting the defendants' motion to compel attendance to the proceeding in demand; with the newly issued order again neglecting to reference the paperwork supporting the reasons for terms as stated for the deposition decline.

On May 08, 2009 the defendants' served the plaintiff by U.S. mail with a new notice of deposition now mandating an 8–hour appearance (which violates the current 7–hour provision allowed under California State law) with the proceeding to be conducted in an office situated some four floors below the Equal Employment Opportunity Commission (where the initiating complaint for equal pay was submitted before filing the lawsuit on October 16, 2008) with an email rejection sent by the plaintiff to the 48–hour notice to appear due to the lack of time needed to appropriately respond.

On May 11, 2009 the petitioner filed an objection to the magistrate order granting the defendants' application to compel attendance to the then rescheduled May 13, 2009 event (with the pleading deferred docketing until May 13, 2009 and only after learning of the plaintiff's rejected attempt at filing an emergency motion using 9th Cir Rule 27–3 while visiting in San Francisco and stopping by the courthouse {with the document created to dissuade future intimidation tactics ···· and no it was not anticipated the document would be accepted due to jurisdiction specifics not yet invoked}) prompting the

district court to order a defendant response, with the opposition filed on May 19, 2009.

On May 20, 2009, in accordance with rule 26 of Federal Rules of Civil Procedure discovery/disclosure protocol, plaintiff filed an ex-parte application to compel defendant production of non-confidential employee wage related records and business activity logs (specific to the wage inequities and applicable to the complaint) with the defendants directed on May 21, 2009 to file an "opposition" on or by June 03, 2009, with the court later setting a telephonic conference hearing for this same day to forego having to make decision to the defendants response.

On May 27, 2009, the district court judge overruled the plaintiff's objections in favor of the deposition undertaking with request the magistrate judge forward a report and recommendations regarding sanctions to be imposed; and with the district court's full knowledge of Title 28 U.S. Code Section 454 provisions enacted and relevant to the acting magistrate judge, which prohibits an executing officer of the court from deciding a case while having in his/her possession an active license allowing them to practice as an attorney (even if not actively involved) since a ruling cannot fairly be distinguished as separate from a decision similar in nature to that of a lawyer practicing law.

On June 01, 2009 pending defendant response to the production of documents request, plaintiff initiated a provisional document entitled "Sole Terms of Settlement Offer with Regards to Case No. 08-cv-1907..." and forwarded the correspondence to defendants' counsel with full provisions for a one time settlement proffer clearly stated as advanced,

and on June 02, 2009 the offer was formally rejected by way of email response.

On June 03, 2009 a status hearing was conducted by telephone and again with no digital recording to the proceeding judicially transcribed; and on June 04, 2009 a report and recommendation was issued by the magistrate judge with the plaintiff objection filed in response on June 17, 2009 as directed by order of the court.

Following the June 3, 2009 telephonic hearing, but before issuance of the June 04, 2009 magistrate report and recommendation advocating the case be dismissed, defendants filed an objection to the plaintiff's May 20, 2009 ex–parte application to compel production of documents related to the wage discrimination complained; and in doing so, conveyed the documentation needed by the district court to comfortably dispense with the corporation's deposition demand given the federal forum's procedural considerations limiting the interview to claims and defenses on file.

On June 22, 2009 defendants filed a response to the plaintiff's June 17, 2009 opposition to the magistrate's report and recommendation findings; and on July 13, 2009 the district judge adopted the findings and report with judgment entered on the following day, July 14, 2009, and with the district court having full knowledge of the two complaints filed with the California State Bar (June/2009) and Ninth Circuit Court of Appeals (June/July 2009) in reference to Title 28 U.S. Code Section 454 violation having been reported; with the court completely innocent as to how the statute application applies.

*B. Proceedings Following Entry of Judgment.*

On July 15, 2009 the plaintiff filed a notice of appeal in the district court with reference made to appropriate orders and judgment relevant to the review applied; and on July 16, 2009 the court of appeals issued a customary timing schedule order denoting assignment of briefing dates with the lower court record to be lodged with the opening brief and at the scheduled time assigned to the review, with the transcript designation form returned on July 24, 2009 (App., *infra*, 6a, 4a – 5a).

On July 27, 2009 the civil docketing statement to the July 15, 2009 notice of appeal was filed in the court of appeals (App., *infra*, 2a – 3a); and on July 31, 2009, and seemingly (following inquiry) on the court's own initiative and in reference to the three questions accompanying the statement calendaring the notice of appeal, an order to show cause was issued in place of the original briefing schedule (with the opening brief and lower court record initially due on October 30, 2009, but now obsolete in lieu of the application applied) with authority relaying Ninth Circuit Rule 3.6(b) as the means to support the summarily disposition command; with the order reciting "**review of the record**" (not **not** yet in the issuing court's possession) as the reason for the execution and change in plans (App., *infra*, 1a).

## REASONS FOR GRANTING THE PETITION

### I. Authority Enacted to the Supreme Court; Issuance of an Extraordinary Writ.

The power of the Supreme Court to issue extraordinary writs is governed by the All Writs Act, which empowers this Court (at any time) to issue "all

writs necessary or appropriate in aid of [its] jurisdiction and agreeable to the usages and principles of law." (Title 28 U.S.C. § 1651) Moreover, in support of this stipulation and rare usage finding, it has been long established that the Supreme Court has the power to issue an extraordinary writ not only in aid of its jurisdiction over a case pending before the court, but also in aid of its potential jurisdiction over a case before a court over which it has direct appellant power, and even in aid of its potential jurisdiction pending over a court for which it lacks direct appellant power but may ultimately be able to review after a decision by an intermediate court. See Ex–parte Peru, 318 U.S. 578, 584–85 (1943) (In this instance, the Supreme Court held that it could issue a writ to federal district court, even though "direct appellate jurisdiction is vested in the circuit court of appeals," because of the Court's "ultimate discretionary jurisdiction by certiorari." *Id.* at 585.)

It has also been noted on occasion and when in need and in aid of later jurisdiction of the Supreme Court using Article III requirements, as applies in this case due to the Title 28 U.S. Code § 454 provision with practice throughout all 50 states requiring this Court to act due to the far reaching implications should knowledge of this judicial following be made public due to the neglect to recognize the importance and take some form of corrective action and or issue an appropriate stand, it has been long decided, "Appellate jurisdiction lies in the review of "an exercise of judicial power" *In re Sanborn*, 148 U.S. 222, 224 (1893), that is, of an act rendered in a "judicial capacity," *Pope v. United States*, 333 U.S. 1, 13 (1944), as opposed to an administrative or legislative act. *Postum Cereal Co.*

*v. California Fig Nut Co.*, 272 U.S. 693 (1927); *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210 (1908). The object must be "review of the judicial decision of some inferior officer or court." Ex parte Hung Hang, 108 U.S. 552, 553 (1883).

## II. Court of Appeals Order to Show Cause; In the Absence of a Referenced Record.

### *A. Standards for Summary Disposition.*

The Ninth Circuit draws its authority for summary dispositions from application of Circuit Rule 3–6 which conveys that a summary affirmance is appropriate only where it is "manifest that the questions on which the decision of the appeal depends are so insubstantial as not to justify further proceedings." [Circuit Rule 3.6(b); United States v Hooton, supra 693 F2d (9th 1982) at 858 – district court's denial of appellant's motion for reduction of sentence summarily affirmed where "in-substantially of the appeal appeared on "the face of appellant's brief."

However, when reviewing the July 31, 2009 order issued by the ninth circuit to replace and override the initial July 16, 2009 timing schedule order designated for the review, which currently prevents the petitioner from accessing full benefit and use of the original record to support the argument and necessary to address the lower court decision by way of appellate review by reciting, "A **review of the record demonstrates that this appeal may be appropriate for summary disposition** because the questions on which this decision in the appeal depends may be so insubstantial as not to justify further proceedings. *See* 9th Cir. R. 3–6;" and with the knowledge the court has not yet accessed the

material herein referenced and in mention in the procuring of this command, while circumventing fundamental due process mandates in addition to knowingly preventing the petitioner from being allowed to access the courts to review the decision prompting the reasons behind the appeal.

*B. Scope of Appeal; Determining the Issues.*

Utilizing Rule 28(a)(9) of Federal Rules of Appellate Procedure to bring forth the material necessary to the court of appeals review the instructions recite, "An appellant brief must include, among other things, "[the party's] contentions and the reasons for them, with citations to the authorities and parts of the record on which the [party] relies." The failure to adequately brief an issue (as in this case which removes the district court record through usage of the 9th Circuit Rule 3.6(b)) it has been repeatedly conveyed the court of appeals "will not ordinarily consider matters on appeal that are not specifically and distinctly argued in appellant's opening brief" Miller v. Fairchild Indus, Inc., 797 F.2d 727, 738 (9th 1986).

The court goes on to recite that an issue may be deemed waived for failure to adequately brief on appeal making the disposition of the petitioner's appeal already decided, absent this Court's inherent power to intervene and reverse the out of bounds, prematurely decided outlook command. Accordingly, for this reason alone, the July 31, 2009 replacement order must be set aside and the original timing schedule order dated on July 16, 2009 reinstated to provide the appropriate avenue required to address the reason underlying the need to seek an appeal.

## III. Title 28 U.S. Code Section 454; Important Question of First Impression Relevant to Reasons for the Appeal.

Review the petitioner's docketing statement and supporting paperwork forwarded to the ninth circuit to initiate the appeal (which includes two recent complaints filed against the district court, and before this order was issued, utilizing Title 28 U.S.C. § 454 provisions prohibiting an "acting" judge from being in the possession of an active license while performing duties consistent with practicing law) summarizes three question material to the briefing, which requires the district court record to be present (in full) in order to conduct the review.

Putting aside the first two clearly reviewable questions relevant to the appeal (i.e. a) whether the lower court's controlled usage of an appearance verses use of alternative means to conduct a deposition is supported by the written record... and, if so, whether this order appears to be an abuse of discretion... and b) whether the plaintiff was prejudiced through interactions with the judge), the concern of whether a magistrate judge findings can be adopted in lieu of Title 28 U.S. Code §454 provisions prohibiting a judicial officer from holding an active license to practice law while performing duties consistent with those of a practicing judge requires appellate review, and from a distancing Court other than that originally approached due to this statute infringement affecting every court in the United States employing a magistrate (or official in similar capacity) if in possession of a license while making a decision consistent with that of the practice of law. Hence, without this Court's direction to command the court of appeals to set aside the July

31, 2009 Order and reinstate the initial briefing schedule to allow the material to be reviewed an order to show cause to create a summarily disposition to dispense with the appeal is inappropriate and must be set aside.

## CONCLUSION

For the reasons stated, the petitioner requests the petition for extraordinary writ of mandamus and/or prohibition be issued to the court of appeals for the ninth circuit directing the July 16, 2009 timing schedule be reinstated and all other orders set aside to enable the petitioner the right to proceed accordingly by way proper appeal.

Dated: August 15, 2009

Respectfully submitted,

s/
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*Petitioner in Propria Persona*

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Order of the United States Court of Appeals for Ninth Circuit, filed/dated July 31, 2009 . . . . . 1a

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Notice of Appeal filed by Plaintiff Susan V. Klat, Filed in the U.S. District Court, Southern District of California, dated July 15, 2009 . . . . . 6a

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Judgment of the U.S. District Court, Southern District of California, dated July 14, 2009 . . . . 7a

# Appendix A

## UNITED STATES COURT OF APPEALS
## FOR THE NINTH CIRCUIT

SUSAN V. KLAT,

Plaintiff – Appellant,

v.

MITCHELL REPAIR INFORMATION COMPANY, LLC AND SNAP-ON INCORPORATED,

Defendants – Appellees.

No. 09-56103

D.C. No. 3:08-cv-01907-JM-CAB
Southern District of California, San Diego

**ORDER**
**Filed July 31, 2009**

A review of the record demonstrates that this appeal may be appropriate for summary disposition because the questions on which the decision in the appeal depends may be so insubstantial as not to justify further proceedings. *See* 9th Cir. R. 3-6. Within 21 days after the date of this order, appellant shall show cause why the judgment in this appeal should not be summarily affirmed. Appellees may file a reply to appellant's response within ten days from service of the response. Appellant's failure to comply with this order shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. 9th Cir. R. 42-1

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

By: Joe Williams
Deputy Clerk

# Appendix B

## UNITED STATES COURT OF APPEALS
## FOR THE NINTH CIRCUIT
## CIVIL DOCKETING STATEMENT

| | |
|---|---|
| SUSAN V. KLAT, | No. 09-56103 |
| Plaintiff – Appellant, | D.C. No. 3:08-cv-01907-JM-CAB |
| v. | Southern District of California, San Diego |
| MITCHELL REPAIR INFORMATION COMPANY, LLC AND SNAP-ON INCORPORATED, | Filed: July 27, 2009 |
| Defendants – Appellees. | |

**Briefly Describe Nature of Action and Result Below:**

This a civil action in which the plaintiff alleges wage discrimination employed by a well-established corporation known to be in violation of wage provisions regulated under the Equal Pay Act with the case dismissed on the trial court's steadfast assumption that a defendant has an unconditional standing in the federal forum to conduct deposition proceedings for the purposes of harassment, intimidation and for recruitment of information already known to the party proceeding the advance.

**Principal Issues Proposed to be Raised on Appeal:**

1. Whether the lower court's controlled usage and Order mandating appearance verses use of alternative means to conduct the deposition is supported by the

written record and initiating defense: and, if so, whether this order to "appear" is an abuse of Fed. R. Civil P. Rule 30 provisions and corresponding state law. 2. Whether all inclusive pretrial orders instituted prejudiced the plaintiff position to receive fair review. 3. Whether the magistrate findings can be adopted pursuant to Title 28 U.S.C. § 454 provisions prohibiting a judicial officer from holding an active license with the California State Bar from rendering an opinion consistent with practicing law.

**Please Indentify any other Legal Proceeding that may have a Bearing on this Case (Including Pending District Court Post-Judgment Motions):**

There is currently a complaint filed with the Equal Employment Opportunity Commission and California Division of Labor Standards for retaliation taken against the plaintiff on May 06, 209 in response to paperwork filed in this lawsuit with pending litigation forthcoming upon the expiration of the 90-day period or right to sue release plus possible litigation against the court/judge named should no corrective action be addressed in response to 28 U.S.C. 454 complaint filed on 7/21/2009. (Complaint filed with tribal council responsible for overseeing judicial conduct in the Ninth Circuit Court of Appeals.).

**Does this Appeal Involve Any of the Following:**
**Likelihood of Motion to Expedite to expedite or to stay the appeal, or other procedural matters (Specify)**

Will be seeking motion to include privately recorded hearing transcripts from 6/03/2009 following certified transcription.

**Certification of Counsel**

s/ Susan V. Klat

Dated: 7/24/2009

# Appendix C

## UNITED STATES COURT OF APPEALS
## FOR THE NINTH CIRCUIT

| | |
|---|---|
| SUSAN V. KLAT, | No. 09-56103 |
| Plaintiff – Appellant, | D.C. No. 3:08-cv-01907-JM-CAB Southern District of California, San Diego |
| v. | |
| MITCHELL REPAIR INFORMATION COMPANY, LLC; SNAP-ON INCORPORATED, | **TIME SCHEDULE ORDER** **Filed July 16, 2009** |
| Defendants – Appellees. | |

The parties shall meet the following time schedule:

| | |
|---|---|
| **Fri., Aug. 14, 2009** | Appellant/petitioner shall file transcript order form with the district court and make payments arrangements with court reporter, pursuant to 9th Cir. R. 10-3.1; |
| **Mon., Sep. 14, 2009** | Court reporter shall file transcript in the district court, Pursuant to FRAP 11(b) and 9th Cir. R. 11-1.1; |
| **Fri., Oct. 30, 2009** | Appellant/petitioner's opening brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1; |

| | |
|---|---|
| Mon., Nov. 30, 2009 | The brief of appellee/ respondent shall be filed and served, pursuant to FRAP 32 and 9th Cir. R. 32-1 |

**The optional appellant/petitioner reply brief shall be filed and served within fourteen days of service of the appellee/respondent's brief, pursuant to FRAP 32 and 9th Cir. R. 32-1.**

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1

Appellants/Petitioners without representation of counsel in a prisoner appeal may have their case submitted on the briefs and record without oral argument, pursuant to FRAP 34(a). Within 10 days of the filing of the appellant's opening brief, parties may file a statement setting forth the reasons why, in the opinion of the parties, oral argument should be heard.

FOR THE COURT:
Molly C. Dwyer
Clerk of Court

Gerald Rosen
Deputy Clerk

# Appendix D

Susan V. Klat
P.O. Box 1442
Poway, California 92074
Telephone # (760) 420-7218
Facsimile # (619) 440-5598

Plaintiff in Propria Persona

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

| | |
|---|---|
| SUSAN V. KLAT, | No. 09-56103 |
| Plaintiff – Appellant, v. | D.C. No. 3:08-cv-01907-JM-CAB Southern District of California, San Diego |
| MITCHELL REPAIR INFORMATION COMPANY, LLC AND SNAP-ON INCORPORATED, | **NOTICE OF APPEAL** |
| Defendants – Appellees. | |

NOTICE IS HEREBY GIVEN that Susan V. Klat, Appellant/Plaintiff named in the above entitled action, here by appeals to the United States Court of Appeals for the Ninth Circuit from the final decision and order rendered entitled "Order Adopting Report and Recommendations," dated July 13, 2009 (Doc 39) and contents of the referenced "Report and Recommendations" dated June 22, 2009 (Doc 36) and final Judgment entered in this proceeding on the 14th day of July, 2009.
No Transcripts requested as there was no trial.

Dated: July 15, 2009 s/
Susan V. Klat/Plaintiff

# Appendix E

## UNITED STATES DISTRICT COURT
## SOUTHERN DISTRICT OF CALIFORNIA

SUSAN V. KLAT, Case No. 3:08-cv-01907-JM-CAB

v. **JUDGMENT IN A CIVIL CASE**

MITCHELL REPAIR
INFORMATION COMPANY,
LLC and SNAP-ON INC.

**XX Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the court adopts the Report and Recommendation in its entirety. Accordingly, the action is hereby dismissed with prejudice .....

July 14, 2009
Date

W. Samuel Hamrick, Jr.
Clerk

S/ T. Lee
(By) Deputy Clerk
ENTERED ON July 14, 2009

Supreme Court, U.S.
FILED
OCT 16 2009
OFFICE OF THE CLERK

No. 09-204

In the
SUPREME COURT OF THE UNITED STATES

October Term, 2009

SUPPLEMENTAL

SUSAN V. KLAT, *Petitioner,*

*vs.*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT, *Respondent,*

ORIGINAL

MITCHELL REPAIR INFORMATION COMPANY, LLC
AND SNAP-ON INCORPORATED,

Real Party[s] of Interest.

**APPLICATION FOR ORDER TO PRODUCE RECORD CITED AS THE GROUNDS FOR REVIEW NECESSARY TO DISMISS THE APPEAL AS ISSUED BY THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ON SEPTEMBER 15, 2009 PURSUANT TO CIRCUIT RULE 3-6; RELATED PETITION FOR EXTRAORDINARY WRIT PENDING REVIEW: CASE NO: 09-204**

SUSAN V. KLAT
P.O. Box 1442
Poway, California 92074
Telephone: (760) 420-7218
Facsimile: (619) 440-5598

*Petitioner in Propria Persona*

No. _____

In the
SUPREME COURT OF THE UNITED STATES

October Term, 2009

---

SUSAN V. KLAT, *Petitioner,*

*vs.*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT, *Respondent,*

---

MITCHELL REPAIR INFORMATION COMPANY, LLC
AND SNAP-ON INCORPORATED,

Real Party[s] of Interest.

---

**APPLICATION FOR ORDER TO PRODUCE RECORD CITED AS THE GROUNDS FOR REVIEW NECESSARY TO DISMISS THE APPEAL AS ISSUED BY THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ON SEPTEMBER 15, 2009 PURSUANT TO CIRCUIT RULE 3-6; RELATED PETITION FOR EXTRAORDINARY WRIT PENDING REVIEW; CASE NO: 09-204**

---

To the Honorable Justice Anthony M. Kennedy, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to Supreme Court Rule 22 and in aid of appellate jurisdiction when deciding the petition for extraordinary writ filed with this Court under Title 28 U.S. Code §1651 on August 15, 2009 under the same name which is currently docketed for October 19, 2009 formal Supreme Court sitting/review, petitioner, Susan V. Klat, hereby applies for an Order to immediately issue to the United States Court of Appeals for the Ninth Circuit to mandate the court of appeals produce evidence of

receipt and proof of review of the accompanying administrative record (which has not yet been forwarded to the court as noted by the dates attached to the July 15, 2009 notice of appeal) as cited in the court of appeals' July 31, 2009 and September 15, 2009 "orders" which conveys an unsupported right to deviate from established procedure for the purposes of dismissing a timely lodged and valid placed appeal, and before briefing and/or forwarding of the record needed to accompany the said review under the guise of Ninth Circuit Rule 3–6 (i.e. on staff's own initiative court replaced the briefing timing scheduled with an order to show cause to prevent essential material from being presented through the non-negotiable appeal process of briefing with lodging of the record by avenue of paid appeal), since it is believed this procedure is unauthorized, unconstitutional and procedurally incorrect due to the lack of right (of any individual) to access the courts and/or receive impartial third party "appropriate" review. (I.e., this is paid case; there is no record to support the lower court's decision since no record accompanies the said order to provide the projected appellate record review; and because this case will come to the Supreme Court in the near future under the guise of procedural error via a petition for writ of certiorari access review, there is no reason to think this Court would have reason to deny this request to mandate the court in question produce the record or rescind the previously ill-placed order to show cause therein being requested in the August 15, 2009 writ petition associated with this application and currently pending review.)

*1. Proceedings Relevant to the Petition Docketed for Review.*

On July 15, 2009 the petitioner filed a notice of appeal in the United States

District Court, Southern District of California, with reference made to the lower court's July 14, 2009 appropriated orders and judgment relevant to the review applied: and on July 16, 2009 the court of appeals issued a customary timing schedule order denoting designated briefing dates with the lower court record to be lodged with the opening brief at the scheduled time assigned; with the transcript designation form and civil docketing statement timely returned on July 24, 2009. (See Exhibit A, Notice of Appeal filed by Susan V. Klat, dated July 15, 2009; Exhibit B, Timing Schedule Order issued on behalf of the Ninth Circuit Court of Appeals, dated July 16, 2009; Exhibit C, Civil Appeals Docketing Statement, dated July 24, 2009/endorsed by the court of appeals on July 27, 2009.)

On July 31, 2009, and seemingly on the court of appeals own initiative and in reference to the petitioner's filing of the civil appeals docketing statement and after lodging of a judicial complaint documenting judicial misconduct since excused and apparently not well received, the court of appeals issued an order to show cause to replace of the appeals assigned original briefing schedule (with the opening brief and lower court record initially due on October 30, 2009, but now obsolete in lieu of the application applied) with authority supposedly conveyed to the court using 9th Circuit Rule 3.6(b) as the means to support the summarily disposition (without first being afforded the opportunity for review) command: with the order reciting "review of the record" (as in the same record not yet in the issuing court's possession) as the reason for the execution and court instituted last minute change in plans. (See Exhibit D, Ninth Circuit Court of Appeals, 9th Cir. Rule 3.6(b); Exhibit E, Judicial

Complaint citing misconduct filed with the Ninth Circuit Court of Appeals and forwarded to the chief judge, dated July 20, 2009; **Exhibit F**, Order to Show Cause issued by the Ninth Circuit Court of Appeals before the brief to the appeal or related paperwork could be filed/forwarded to the court, dated July 31, 2009.)

On August 15, 2009, following issuance of the July 31, 2009 order to show cause but before filing of a response to the command, the petitioner filed a petition for extraordinary writ (assigned Case No. 09-204) to request the United States Supreme Court's direction and intervention in light of the court of appeals order to show cause before the matter could be considered, if even necessary, as appropriate; and on August 20, 2009 petitioner filed the court ordered response with the defendants reply filed on August 24, 2009 in line with the order's designated deadlines. (See **Exhibit G**, United States Supreme Court Docket, Case No. 09-204, dated/docketed August 15, 2009; **Exhibit H**, petitioner response to the Ninth Circuit Court of Appeals Order to Show Cause, dated August 20, 2009; **Exhibit I**, Defendant (Snap-on Inc.) rebuttal in support and response to the order to show cause, dated August 28, 2009.)

On September 01, 2009, the Ninth Circuit Court of Appeals issued an order to dismiss the appeal stating a failure to prosecute by ignoring the petitioner's timely filed response to the July 31, 2009 order to show cause citing Ninth Circuit Rule 42-1 as procedurally appropriate; with the court then immediately issuing a mandate to the district court involved irrespective of the material or contents (or lack of contents thereof) on file in an apparent attempt to close off the case to

prevent specifics from appearing to be properly forwarded to this court by way of later review. (See **Exhibit J**, Order Dismissing the Appeal for Failure to Prosecute issued by the Ninth Circuit Court of Appeals, dated September 01, 2009.)

On September 08, 2009, following inquiry to the White House due to the inability to initially get the writ petition acknowledged and in light of Supreme Court Rule 45 ultimate disposition guidelines, the Ninth Circuit Court of Appeals spontaneously rescinded its misplaced September 01, 2009 command (citing "error" as the reason why); and on September 15, 2009 the court of appeals reissued the same order dismissing the appeal by once again reciting "upon review of the record" (which both attached court docket sheets identify as never being forwarded to the court of appeal to accompany this unauthorized and procedurally censored form of review) with the court (per curiam) thereafter reciting questions raised in the appeal as so insubstantial as to not require further argument and with **full** knowledge this activity violates every constitutional provision utilized under Article III when deciding powers instilled to the courts and with knowledge the action constitutes a tort given that the action is not authorized (irrespective of titles or lifetime guaranteed positions of employment applied) pursuant to federal guidelines. (See **Exhibit K**, Ninth Circuit Court of Appeals Order <u>rescinding</u> previous Order to Dismiss for Failure to Prosecute, dated September 08, 2009; **Exhibit L**, <u>Reinstated</u> Ninth Circuit Court of Appeals Order Dismissing the Appeal once again citing "review of the record" (which has yet to be lodged or forwarded to the court) <u>and</u> in light of the response to the order to show cause, dated September

15, 2009; **Exhibit M**, Docket Entry Sheet issued by the United States District Court for the Southern District of California, downloaded/dated October 14, 2009; **Exhibit N**; United States Ninth Circuit Court of Appeals Docket denoting all action/entries, download/dated October 02, 2009.)

*2. Conditions for Application Satisfied by Preceding Requirements.*

As cited in the August 15, 2009 petition for extraordinary writ filed in connection with this application requesting the order to the procedural irregularity being utilized to dismiss the appeal be rescinded and the appeal be allowed to proceed as originally assigned, it has been said that the power of the Supreme Court to issue extraordinary writs is governed by the All Writs Act, which empowers this Court (at any time) to issue "all writs necessary or appropriate in aid of [its] jurisdiction and agreeable to the usages and principles of law." (Title 28 U.S.C. § 1651)

Accordingly, also as previously mentioned, in support of this stipulation and rare usage finding, it has been long established that the Supreme Court has the power to issue an extraordinary writ not only in aid of its jurisdiction over a case pending before the court, but also in aid of its potential jurisdiction over a case before a court over which it has direct appellant power, and even in aid of its potential jurisdiction pending over a court for which it lacks direct appellant power but may ultimately be able to review after a decision by an intermediate court. See Ex-parte Peru, 318 U.S. 578, 584–85 (1943) (In this instance, the Supreme Court held that it could issue a writ to federal district court, even though "direct appellate

jurisdiction is vested in the circuit court of appeals," because of the Court's "ultimate discretionary jurisdiction by certiorari." *Id.* at 585.)

Hence, going by supreme court application criteria using the assumption that this Court is acting under the guidance vested under Article III of the Constitution of the United States and not acting independent and/or separate from legislation instituted guidelines, there is no reason to believe the August 15, 2009 writ petition accompanying this application requesting an order be issued to mandate the court of appeals produce the parts of the record "as cited" to dismiss the appeal would not be granted (if in fact the court of appeals orders are backed as suggested, which obviously is not supported by the documentation or orders thus far publicly supplied) in accordance with federal guidelines.

*3. Conclusion*

For the reasons cited, the petitioner respectfully requests the Supreme Court of the United States immediately issue an Order mandating the United States Court of Appeals for the Ninth Circuit produce the "parts" of the record (if any) as mentioned and conveyed and relied upon and cited in the July 31, 2009 and September 15, 2009 Order conveyed as the grounds and reason to dismiss the appeal.

Dated: October 14, 2009

Respectfully submitted,

SUSAN V. KLAT
P.O. Box 1442
Poway, California 92074
Telephone: 760-420-7218

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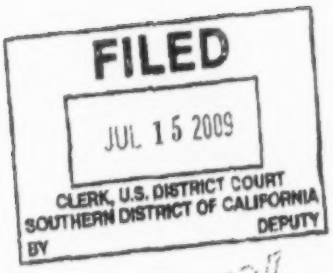
Susan V. Klat
P.O Box 1442
Poway, California 92074
Telephone # (760) 420-7218
Facsimile # (619) 440-5598

Plaintiff in Propria Persona




**IN THE UNITED STATES DISTRICT COURT**

**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

| | |
|---|---|
| SUSAN V. KLAT,<br><br>Appellant/*Plaintiff*,<br><br>v.<br><br>MITCHELL REPAIR INFORMATION COMPANY, LLC and SNAP-ON INCOPORATED,<br><br>Appellee/*Defendants*. | Civil Case No.: 08-cv-1907 JM (CAB)<br><br>**NOTICE OF APPEAL**<br><br>Trial Judge: Jeffrey T. Miller<br>Date of Complaint: October 16, 2009<br>Date of Disposition Order: July 13, 2009<br>Entry of Judgment: July 14, 2009 |

NOTICE IS HEREBY GIVEN that Susan V. Klat, Appellant/Plaintiff named in the above entitled action, here by appeals to the United States Court of Appeals for the Ninth Circuit from the final decision and order rendered entitled "Order Adopting Report and Recommendations," dated July 13, 2009 (Doc 39) and contents of the referenced "Report and Recommendations" dated June 22, 2009 (Doc 36) and final Judgment entered in this proceeding on the 14th day of July, 2009.

No Transcripts requested as there was no trial.

Dated: July 15, 2009

SUSAN V. KLAT
Plaintiff/Appellant

AO 450 Judgment in a Civil Case

# United States District Court

**SOUTHERN DISTRICT OF CALIFORNIA**

SUSAN V. KLAT

V.

MITCHELL REPAIR INFORMATION COMPANY, LLC and SNAP-ON, INC.

**JUDGMENT IN A CIVIL CASE**

**CASE NUMBER:** 08 CV 1907 JM (CAB)

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that the court adopts the Report and Recommendation in its entirety. Accordingly, the action is hereby dismissed with prejudice.....

.....

July 14, 2009
Date

W. Samuel Hamrick, Jr.
Clerk

S/ T Lee
(By) Deputy Clerk

ENTERED ON July 14, 2009

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

SUSAN V. KLAT,

Plaintiff,

v.

MITCHELL REPAIR INFORMATION COMPANY, LLC and SNAP-ON, INC.,

Defendants.

CASE NO. 08 CV 1907 JM (CAB)

**ORDER ADOPTING REPORT AND RECOMMENDATIONS**

Doc. No. 36

On June 4, 2009, Magistrate Judge Cathy Ann Bencivengo issued a Report and Recommendations suggesting that this court dismiss the above-captioned matter with prejudice due to Plaintiff's violations of court orders compelling her to submit to a deposition. (Doc. No. 36.) Plaintiff filed objections to the Report on June 17, 2009 (Doc. No. 37), and Defendants provided a Reply on June 22, 2009 (Doc. No. 38.)

The court reviews a magistrate judge's R&R according to the standards set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636. The court "shall make a de novo determination of those portions of the report . . . to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); United States v. Raddatz, 447 U.S. 667, 673-74 (1980).

In her objections, Plaintiff reiterates the same arguments she has advanced previously. For example, she alleges Defendants have failed to respond to her discovery requests and are attempting

to harass her through unnecessary attempts to obtain information they already have. According to Plaintiff, these are valid reasons to refuse to submit to a live deposition. Instead, Plaintiff has attempted to dictate the conditions of the deposition by offering to answer interrogatories or submit to a telephone interview. These arguments have been dismissed by this court and the Magistrate Judge on several prior occasions. This court sees no reason to believe Defendants wish to use the deposition as a tool of harassment. Barring such a concern, Defendants do not need to provide any "reasonable showing" or justification for pursuing their discovery rights under Fed. R. Civ. P. 30.

The court has provided Plaintiff with ample opportunity to comply with its orders and, as described in the Report, has been exceedingly accommodating of Plaintiff's concerns about her safety and the scope of deposition questions. Nevertheless, Plaintiff has willfully refused to comply with the court's orders. Plaintiff was clearly warned that her failure to comply would likely result in dismissal of her case.

Therefore, having carefully considered the thorough and thoughtful R&R, the record before the court, Petitioner's objections to the R&R, and the applicable authorities, the court **ADOPTS** the R&R in its entirety. (Doc. No. 36.) Accordingly, the action is hereby **DISMISSED WITH PREJUDICE.** The Clerk of Court is instructed to close the case file.

**IT IS SO ORDERED.**

DATED: July 13, 2009

Hon. Jeffrey T. Miller
United States District Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| SUSAN V. KLAT,<br><br>Plaintiff,<br><br>v.<br><br>MITCHELL REPAIR INFORMATION COMPANY, LLC and SNAP-ON INC.,<br><br>Defendants. | Civil No. 08cv1907 JM (CAB)<br><br>**REPORT AND RECOMMENDATION REGARDING DISCOVERY SANCTIONS** |

Pursuant to the May 27, 2009 Order of the Honorable Jeffrey T. Miller, this matter is before the Court for a Report and Recommendation regarding the imposition of sanctions for Plaintiff's failure to submit to a deposition. On October 16, 2008, Plaintiff Susan V. Klat, proceeding *pro se*, filed a verified complaint alleging Defendants Mitchell Repair Information Co.("Mitchell") and Snap-On Inc. ("Snap-On"), violated the Equal Pay Act, 29 U.S.C §206(d)(1), with regard to her compensation as an employee at Mitchell, a division of Snap-On. [Doc. No. 1.] On February 12, 2009, the Court ordered the parties to engage in a Rule 26(f) conference, exchange initial disclosures and lodge a joint discovery plan with the Court. [Doc. No. 10.] The parties lodged their joint plan on March 18, 2009, in which Plaintiff indicated she had an objection to being deposed in this lawsuit.

On April 2, 2009, the Court held a Case Management Conference, [Doc. No. 11], to set a scheduling order for this case, [Doc. No. 12]. During that conference, Plaintiff was instructed that Rule 30 of the Federal Rules of Civil Procedure provides that defendants may take the oral deposition of a

plaintiff without leave of court and that Plaintiff would be expected to make herself available for a properly noticed deposition. Because Plaintiff was representing herself, the Court offered that the deposition could be held in the courtroom so Plaintiff could seek immediate intervention if she had an issue with the scope of the questions. Defendants thereafter noticed Plaintiff's deposition for April 29, 2009.

On April 12, 2009, Plaintiff filed an objection to the scheduling order including her objection to being deposed in this lawsuit. [Doc. No. 14.] She further notified Defendants she would not appear for the noticed deposition. On April 28, 2009, the District Judge overruled Plaintiff's objection to being deposed. [Doc. No. 19.] Defendants then filed a motion to compel Plaintiff's attendance at deposition and for sanctions. [Doc. No. 20.] Plaintiff filed an opposition to the motion. [Doc. No. 22.] On May 6, 2009, the Court granted Defendants' motion to compel, denied the request for sanctions, and further ordered that Plaintiff need not be deposed in the courtroom if she preferred, but could appear at a court reporter's office. [Doc. No. 23.] Defendants re-noticed Plaintiff's deposition for May 13, 2009, in accordance with this Court's order. Plaintiff refused to appear and on May 11, 2009, Plaintiff filed objections to the order granting Defendants' motion to compel. [Doc. No. 24.]

On May 27, 2009, the District Judge again overruled Plaintiff's objection to having her deposition taken. [Doc. No. 32.] On June 3, 2009, the Court held a status conference to address the matter of sanctions for Plaintiff's previous failure to comply with the Court's order and to determine a date for her deposition. Plaintiff Susan Klat, proceeding *pro se*, appeared on her own behalf. Peter Brachman, Esq., appeared for Defendants.

Plaintiff represented to the Court that despite the two orders directing her to make herself available for deposition, she would not appear at a deposition noticed by Defendants. She stated Defendants could send her written deposition questions or depose her by telephone, but she refused to personally appear for a deposition. Defendants, however, have not agreed to take Plaintiff's deposition by remote means and Plaintiff has not shown good cause for an order to be deposed by telephone instead of in person as noticed by Defendants. *See* Fed. R. Civ. P. 30(b)(4).

Plaintiff was admonished that if she did not comply with the Court's orders to appear for a deposition, the undersigned would recommend to the District Judge that the case be dismissed.

Defendants requested the dismissal be with prejudice as Plaintiff brought this claim but is steadfastly refusing to comply with Defendants' right to depose her on the nature of her complaint. Plaintiff did not alter her position. Accordingly, this Court recommends the matter be **DISMISSED WITH PREJUDICE** due to Plaintiff's refusal to comply with Court orders and the Federal Rules of Civil Procedure on fundamental discovery. This Report and Recommendation of the undersigned Magistrate Judge is submitted to the Honorable Jeffrey T. Miller, pursuant to 28 U.S.C. § 636 (b)(1). No later than **June 17, 2009**, any party to this action may file written objections with the Court and serve a copy on all parties. The document should be captioned "Objections to Report and Recommendation." Any reply to the objections shall be filed with the Court and served on all parties within **10 days** of being served with the objections.

**IT IS SO ORDERED.**

DATED: June 4, 2009

**CATHY ANN BENCIVENGO**
United States Magistrate Judge

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUL 16 2009

MOLLY C DWYER, CLERK OF COURT
U S COURT OF APPEALS

SUSAN V. KLAT,

Plaintiff - Appellant,

v.

MITCHELL REPAIR INFORMATION COMPANY, LLC; SNAP-ON INCORPORATED,

Defendants - Appellees.

No. 09-56103
D.C. No. 3:08-cv-01907-JM-CAB
Southern District of California, San Diego

**TIME SCHEDULE ORDER**

The parties shall meet the following time schedule:

| | |
|---|---|
| **Fri., August 14, 2009** | Appellant/petitioner shall file transcript order form with the district court and make payment arrangements with court reporter, pursuant to 9th Cir. R. 10-3.1; |
| **Mon., September 14, 2009** | Court reporter shall file transcript in the district court, pursuant to FRAP 11(b) and 9th Cir. R. 11-1.1; |
| **Fri., October 30, 2009** | Appellant/petitioner's opening brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1; |
| **Mon., November 30, 2009** | The brief of appellee/respondent shall be filed and served, pursuant to FRAP 32 and 9th Cir. R. 32-1 |

**The optional appellant/petitioner reply brief shall be filed and served within fourteen days of service of the appellee/respondent's brief, pursuant to FRAP 32 and 9th Cir. R. 32-1.**

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1

Appellants/Petitioners without representation of counsel in a prisoner appeal may have their case submitted on the briefs and record without oral argument, pursuant to FRAP 34(a). Within 10 days of the filing of the appellant's opening brief, parties may file a statement setting forth the reasons why, in the opinion of the parties, oral argument should be heard.

**FOR THE COURT:**

**Molly C. Dwyer**
**Clerk of Court**

**Gerald Rosen**
**Deputy Clerk**

Office of the Clerk
**United States Court of Appeals for the Ninth Circuit**
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939

Molly C. Dwyer
Clerk of Court

(415) 355-8000

July 16, 2009

| | |
|---|---|
| CA9 Docket No.: | 09-56103 |
| Agency Number: | 3:08-cv-01907-JM-CAB |
| Short Title: | Susan Klat v. Mitchell Repair Information Co, et al |

Dear Counsel:

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case. Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

**The due dates for designating and filing the reporter's transcript, if applicable, filing the parties' briefs and otherwise perfecting the appeal have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the appellant to comply with the time schedule order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1.**

The following information is being provided in an attempt to answer the most frequently asked questions regarding the appellate process. Please review this information very carefully. For convenience, we use the term "Circuit Rules" instead of "Rules of the United States Court of Appeals for the Ninth Circuit" and "FRAP" instead of "Federal Rules of Appellate Procedure."

Enclosed with this letter is an appellate processing schedule along with a case processing checklist to help you monitor the progress of your case.

**Appellants/Petitioners who are filing pro se should refer to the accompanying information sheet regarding the filing of informal briefs.**

/0

Office of the Clerk
**United States Court of Appeals for the Ninth Circuit**
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939

Molly C. Dwyer
Clerk of Court

(415) 355-8000

---

**Information for Pro Se Appellants/Petitioners**
Option of Proceeding on an Informal Brief

---

Our records indicate that you do not have an attorney to help you with this case. Accordingly, we have enclosed an information package and an informal brief form for pro se appellants and petitioners. Please read them carefully.

You have the option of filing an informal brief on the attached form instead of filing a standard brief that meets the requirements of FRAP 28 and Circuit Rules 28-1, 28-2, 28-3 and 28-4. The informal brief may make it easier for you to make your arguments to the Court without worrying about the rules on what a brief is supposed to look like and what it must contain. The Court will give the same consideration to an informal brief as it will give to a standard brief that satisfies all the rules. You should submit whatever brief is easier for you to prepare.

If you decide to file an informal brief, please answer all of the questions as clearly and accurately as possible. You may cite statutes, legal authority, and cases to support your argument, but this is not required. If you need more space to answer the questions, write your answers on separate sheets of paper and attach them to the informal brief. You should be certain that whatever you file answers all of the questions in the informal brief.

If you decide to file a standard brief, that brief must meet all of the requirements of FRAP 28 and Circuit Rules 28-1, 28-2, 28-3, and 28-4. This means that your standard brief could be rejected unless it meets all of these requirements.

**Important:**
After you decide which type of brief to file - informal or standard - you **must** file that brief by the date noted on the enclosed **Time Schedule Order** or your appeal may be dismissed for failure to prosecute pursuant to Circuit Rule 42-1. *See also* FRAP 31(c).

//

**Important:**
Even if you file an informal brief, you **must** comply with all other rules for processing your appeal including, but not limited to: ordering the reporter's transcript, see Circuit Rule 10-3.1; serving a copy of your brief on the opposing party, see FRAP 31(a); filing the appropriate number of copies of your brief with the Court of Appeals, see Circuit Rule 31-1; and filing an excerpt of record at the same time that you file your opening brief, see Circuit Rule 30-1.1.

**Please type or print your responses on the informal brief.**

# Notice of Appeal Notification Form

**To:** Clerk, U.S. Court of Appeals **Date:** 7/16/2009
**From:** U.S. District Court, Southern District of California
**Subject:** New Appeals Case Information & Docket Fee Notification

## Case Information

Case Title: SUSAN V KLAT v. MITCHELL REPAIR INFORMATION COMPANY, LLC; SNAP-ON INCORPORATED

U.S.D.C. No.: 08-cv-01907-JM-CAB U.S.D.C. Judge: Jeffrey T. Miller

Complaint/Indictment/Petition Filed: Complaint

Appealed Order Entered: 7/14/2009

Notice of Appeal Filed: 7/15/2009

Court Reporter: No court reporter

COA Status: ☐ Granted in full/part (appeal only) ☐ Denied (send clerk's file)

## Docket Fee Notification

Docket Fee: [x] Paid ☐ Not Paid ☐ No Fee Required

USA/GOVT. APPEAL: ☐ Yes [x] No

Date F/P granted (Show Date and Attach Copy of Order): _____

Was F/P Status Revoked? ☐ Yes ☐ No

Companion Case(s). (Please list consolidated cases, if applicable) _____

## Counsel Information

**Appellant Counsel:**

Susan V Klat
P.O. Box 1442
Poway, CA 92074
(760) 420-7218

**Appellee Counsel:**

Joseph B Farrell
Latham and Watkins LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
(213) 485-1234

Peter Jay Brachman
Latham & Watkins LLP
355 South Grand Avenue
Los Angeles , CA 90071-1560
(213) 891-7725

Counsel Status: ☐ Retained ☐ Appointed [x] Pro Se

Appointed by: _____
(Attach copy of order/minutes)

A-11 (rev. 7/00)

RECEIVED
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS



JUL 27 2009

FILED
DOCKETED DATE INITIAL

| USCA DOCKET # (IF KNOWN) |
|---|
| 09-56103 |

ORIGINAL

# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
## CIVIL APPEALS DOCKETING STATEMENT

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

| TITLE IN FULL: | DISTRICT: Southern District, CA | JUDGE: Jeffrey T. Miller |
|---|---|---|
| | DISTRICT COURT NUMBER: 3:08-cv-01907-JM-CAB | |
| Susan V. Klat v. Mitchell Repair Information Company, LLC and Snap-on Incorporated | DATE NOTICE OF APPEAL FILED: July 15, 2009 | IS THIS A CROSS APPEAL? ☐ YES |
| | IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY): N/A | |

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:

This is a civil action in which the plaintiff alleges wage discrimination employed by a well-established corporation known to be in violation of wage provisions regulated under the Equal Pay Act with the case dismissed on the trial court's steadfast assumption that a defendant has an unconditional standing in the federal forum to conduct deposition proceedings for the purposes of harassment, intimidation and for recruitment of information already known to the party preceding the advance.

PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL:

1. Whether the lower court's controlled usage and Order mandating appearance verses use of alternative means to conduct the deposition is supported by the written record and initiating defense; and, if so, whether this order to "appear" is an abuse of Fed. R. Civil P., Rule 30 provisions and corresponding state law. 2. Whether all-inclusive pretrial orders instituted prejudiced the plaintiff's position to receive fair review. 3. Whether the magistrate findings can be adopted pursuant to Title 28 U.S.C. § 454 provisions prohibiting a judicial officer holding active license from rendering an opinion consistent with practicing law.

PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS)

There is currently a complaint filed with the Equal Employment Opportunity Commission and California Division of Labor Standards for retaliation taken against the plaintiff on May 06, 2009 in response to paperwork filed in this lawsuit with pending litigation forthcoming upon the expiration of the 90-day period or right to sue release plus possible litigation against the court/judge named should no corrective action be addressed in response to 28 U.S.C. 454 complaint filed on 7/21/2009.

DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:

☐ Possibility of Settlement

☐ Likelihood that intervening precedent will control outcome of appeal

☒ Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify)

Will be seeking motion to include privately recorded hearing transcripts from 6/03/2009 following certified transcription.

☐ Any other information relevant to the inclusion of this case in the Mediation Program

☐ Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges

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## LOWER COURT INFORMATION

| JURISDICTION | | DISTRICT COURT DISPOSITION | |
|---|---|---|---|
| FEDERAL | APPELLATE | TYPE OF JUDGMENT/ORDER APPEALED | RELIEF |
| ☒ FEDERAL QUESTION<br>☐ DIVERSITY<br>☐ OTHER (SPECIFY): | ☒ FINAL DECISION OF DISTRICT COURT<br>☐ INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT<br>☐ INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY):<br>☐ OTHER (SPECIFY): | ☐ DEFAULT JUDGMENT<br>☐ DISMISSAL/JURISDICTION<br>☐ DISMISSAL/MERITS<br>☐ SUMMARY JUDGMENT<br>☐ JUDGMENT/COURT DECISION<br>☐ JUDGMENT/JURY VERDICT<br>☐ DECLARATORY JUDGMENT<br>☐ JUDGMENT AS A MATTER OF LAW<br>☒ OTHER (SPECIFY):<br>Order Adopting Report and Recommendations of Magistrate Judge | ☒ DAMAGES:<br>SOUGHT $ 3,500<br>AWARDED $ 0<br>☐ INJUNCTIONS:<br>☐ PRELIMINARY<br>☐ PERMANENT<br>☐ GRANTED<br>☐ DENIED<br>☐ ATTORNEY FEES:<br>SOUGHT $<br>AWARDED $<br>☐ PENDING<br>☒ COSTS: $ |

## CERTIFICATION OF COUNSEL

I CERTIFY THAT:

1. COPIES OF ORDER/JUDGMENT APPEALED FROM ARE ATTACHED.

2. A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2).

3. A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.

4. I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.

Susan V Klat — Signature

7/24/2009 — Date

## COUNSEL WHO COMPLETED THIS FORM

| | | | |
|---|---|---|---|
| NAME | Susan V Klat | | |
| FIRM | N/A | | |
| ADDRESS | P.O Box 1442 | | |
| CITY | Poway | STATE California | ZIP CODE 92074 |
| E-MAIL | sclat@cox.net | TELEPHONE 760-420-7218 | |
| FAX | 619-440-5598 (LL: Please call before Faxing) | | |

****THIS DOCUMENT SHOULD BE FILED IN DISTRICT COURT WITH THE NOTICE OF APPEAL. ****
****IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS.****

# UNITED STATES COURT OF APPEALS

# for the

# NINTH CIRCUIT

Federal Rules of Appellate Procedure

Ninth Circuit Rules

*Circuit Advisory Committee Notes*

**January 1, 2009**

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## 9th Cir. R. 3-6

SUMMARY DISPOSITION OF CIVIL APPEALS

At any time prior to the completion of briefing in a civil appeal if the court determines.

(a) that clear error or an intervening court decision or recent legislation requires reversal or vacation of the judgment or order appealed from or a remand for additional proceedings, or

(b) that it is manifest that the questions on which the decision in the appeal depends are so insubstantial as not to justify further proceedings the court may, after affording the parties an opportunity to show cause, issue an appropriate dispositive order.

At any time prior to the disposition of a civil appeal if the court determines that the appeal is not within its jurisdiction, the court may issue an order dismissing the appeal without notice or further proceedings. *(Eff. 7-95)*

## Fed. R. App. P. 3.1

**Rule 3.1. Appeal from a Judgment of a Magistrate Judge in a Civil Case**

**[Abrogated Apr. 24, 1998, eff. Dec. 1, 1998]**

## Fed. R. App. P. 4

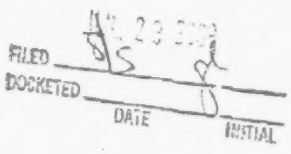
**APPEAL AS OF RIGHT - WHEN TAKEN**

**(a) Appeal in a Civil Case.**

**(1) Time for Filing a Notice of Appeal.**

09-90167

*Susan V. Klat*
*P.O. Box 1442*
*Poway, California 92074*
*Telephone # (760) 420-7218*
*Facsimile # (619) 440-5598*




Tuesday, July 20, 2009

ATTN.. Clerk of the Court
United States Ninth Circuit Court of Appeals
P.O. Box 193939
San Francisco, California 94119-3939

**RE: Complaint of Judicial Misconduct or Disability in Regards to Complaint with Supporting Documents Forwarded for Judicial Review on July 06, 2009.**

To Whom It May Concern:

In accordance with the correspondence forwarded to the Ninth Circuit Court of Appeals on July 06, 2009 **and** subsequent return on July 15, 2009 following lodging of the case related notice of appeal, I am forwarding 5 **complete** sets of appropriate documents concerning the complaint against a federal judge active and practicing in the State of California per the California State Commission on Judicial Performance instruction return (dated June 26, 2009) with a request for action (or disposition thereof) following the undertaking of this matter presented before the appropriate committee designated for this review.

In addition, which requires clarification due to the coincidental timeline associated with the return of the July 06, 2009 judicial misconduct documents following case related dismissal (July 13, 2009), entry of judgment (July 14, 2009) and return of the complaint documents (July 15, 2009) upon and/or after filing of the case related notice of appeal (July 15, 2009), I need to inquire as to whether anyone other than the Chief judge, Alex Kozinski, (i.e. officer named and in possession of the documents for 1 week prior to the paperwork's formal return) and immediate staff have knowledge of the contents of this complaint since it will require recusal paperwork to be filed with the opening brief due to contamination associated with the information underlying this current judicial complaint.

If you have any questions or underlying concerns I can be reached at 760-420-7218 or by written correspondence at the address listed above. Thank you for your attention and confidential handling of these documents while this case proceeds on appeal.

Sincerely,

Susan Klat

OFFICE OF THE CIRCUIT EXECUTIVE

UNITED STATES COURTS FOR THE NINTH CIRCUIT

JAMES R. BROWNING UNITED STATES COURTHOUSE
95 SEVENTH STREET
POST OFFICE BOX 193939
SAN FRANCISCO, CA 94119-3939

CATHY A. CATTERSON,
CIRCUIT & COURT OF APPEALS EXECUTIVE
PHONE: (415) 355-8000

August 5, 2009

Susan V. Klat
P.O. Box 1442
Poway, CA 92074

Re: Complaint of Judicial Misconduct No. 09-90167

Dear Ms. Klat:

We have received the complaint of judicial misconduct filed pursuant to 28 U.S.C. § 351(a) against Judge Miller. Docket Number 09-90167 has been assigned to this matter.

Pursuant to the Rules for Judicial-Conduct and Judicial-Disability Proceedings, a copy of the complaint has been forwarded to Chief Judge Kozinski, Chief Judge Gonzalez and Judge Miller.

Very truly yours,

Cathy A. Catterson

CAC/gb

18(a)

Judicial Council of the Ninth Circuit

## COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 5 (below). The RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The rules are available in federal court clerks' offices, on individual federal courts' Web sites, and on www.uscourts.gov.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. For the number of copies to file, consult the local rules or clerk's office of the court in which your complaint is required to be filed. Enclose each copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: SUSAN V. KLAT

   Contact Address: P.O. Box 1442
   Poway, California

   Daytime telephone: 760 420-7218

2. Name(s) of Judge(s): Jeffrey T. Miller

   Court: U.S. District Court, Southern District of California (San Diego)

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?

   [X] Yes [ ] No

   If "yes," give the following information about each lawsuit:

   Court: USDC. Southern District of CA.

   Case Number: 08-CV-1907 (Please see content.

   Docket number of any appeal to the 9th Circuit: 09-56103 FORWARDED ON 7/6/09

   Are (were) you a party or lawyer in the lawsuit? (Klat vs. Mitchell Repair Information Company, LLC et al.

   [X] Party [X] ~~Lawyer~~ AND Counsel of Record [ ] Neither

Note: 2 separate sets of attachments KIT complaint included.



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If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:

Self Representation - Please see cover page for contact info.

4. Have you filed any lawsuits against the judge?

[ ] Yes [X] No (Not appropriate at this stage.)

If "yes," give the following information about each such lawsuit:

Court:

Case Number:

Present status of lawsuit:

Name, address, and telephone number of your lawyer for the lawsuit against the judge:

Note: Question premature and not applicable unless NO Action taken by review committee to correct situation.

Court to which any appeal has been taken in the lawsuit against the judge:

N/A

Docket number of the appeal: N/A

Present status of the appeal: N/A

5. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation. Please see 2 part Attachments w/ supped documents forwarded on July 6, 2009.

6. **Declaratioa and signature:** (Note: All documents and correspondence returned on July 15, 2009

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

(Signature) Dawn R. Klet (Date) 7/20/2009

# SECTION 1

## Case Related Documents Associated with Complaint Against A Federal Judge

---

NOTE: ALL MATERIAL ORDERS INCLUDED WITH OR IN RELATION TO ANY OF THE INFORMATION PERTAINING TO THIS COMPLAINT ARE **NOT** SUBMITTED FOR OR INTENDED TO BE USED FOR THE PURPOSES OF DETERMINING THE VALIDITY OF THE UNDERLYING CONTENTS ASSOCIATED WITH THE PARTICIPATING ACTION OR INTENDED TO BE USED IN RELATION TO THE DISPOSITION ORDER BEING SOUGHT BY WAY OF APPEAL

# COMPLAINT ABOUT A CALIFORNIA JUDGE, COURT COMMISSIONER OR REFEREE

*Confidential under California Constitution Article VI, Section 18, and Commission Rule 102*

ORIGINAL

For information about the Commission on Judicial Performance and instructions on filling out and submitting this form, please visit our Web site at http://cjp.ca.gov

**Today's date:** June 18, 2009

**Your name:** Susan V. Klat

**Your telephone number:** 760-420-7218

**Your address:** P.O. Box 1442
Poway, California 92074

**Your attorney's name:** N/A

**Your attorney's telephone number:** N/A

**Name of judge:** Jeffrey T. Miller, U.S. District Judge
**OR**
**Name of court commissioner or referee:** Cathy Ann Bencivengo, Magistrate Judge
(If your complaint involves a court commissioner or referee, you must first submit your complaint to the local court. If you have done so, please attach copies of your correspondence to and from that court.)

**Court:** United States District Court, Southern District California

**County:** San Diego

**Name of case and case number:** Case No. 3:08-cv-01907 JM(CAB).
Klat vs. Mitchell Repair Information Company, LLC et al.

**Please specify what action or behavior of the judge, court commissioner or referee is the basis of your complaint. Provide relevant dates and the names of others present.** (Use additional pages if necessary.)

Judge Miller has and is relying on information to issue disposition Orders in the above entitled case being tried in a United States District Court on the basis of guidance and opinion of a magistrate judge in possession of an active license to practice law in the State of California (Cal. Bar # 138791) while simultaneously executing judicial duties in a manner consistent with an individual acting as an attorney in the case which is forbidden under Title 28 of the United States Code section 454.

Return to: **Commission on Judicial Performance**
**455 Golden Gate Avenue, Suite 14400**
**San Francisco, California 94102**
Telephone: **(415) 557-1200**
Fax: **(415) 557-1266**

Enclosures: Docket for Case No. 08-cv-1907
California Bar License # 138791
28 U.S. Code § 454
Relevant Order Relating to Complaint

# THE STATE BAR OF CALIFORNIA

## CALIFORNIA ATTORNEY COMPLAINT FORM

*Read instructions before filling in this form.*

Date 6/24/2009

(1) Your name and address Susan Klat
P.O. Box 1442, Poway, California 92074

(2) Telephone number: Home 619-440-5598 Cell/Work 760-420-7218

(3) The name, address and telephone number of the attorney(s) you are complaining about. *(See note below.)* #619-557-7688
Cathy Ann Bencivengo (Calbar # 138791)
United States District Court
940 Front Street, San Diego, California 92101

(4) Have you or a member of your family complained about this attorney(s) previously?
Yes ___ No X If Yes, please state to whom the previous complaint was made, its approximate date and disposition.

N/A

(5) Did you employ the attorney? Answer Yes or (No) and, if "Yes," give the approximate date you employed the attorney(s) and the amount, if any, paid to the attorney(s)

N/A

(6) If your answer to #5 above is "No," what is your connection with the attorney(s)? Explain briefly I am a party to a case where (Case # 08-cv-1907) The Attorney is practicing law while holding a position and making decisions as a United States magistrate judge in violation of 28 U.S. Code section 454 and Rules of Conduct (Professional)) Rule 3-210 And Article 11 of State Bar Act. 2-400

(7) Include with this form *(on a separate piece of paper)* a statement of what the attorney(s) did or did not do which is the basis of your complaint. Please state the facts as you understand them. Do not include opinions or arguments. If you employed the attorney(s), state what you employed the attorney(s) to do. Sign and date each separate piece of paper. Additional information may be requested. *(Attach copies of pertinent documents such as a copy of the fee agreement, cancelled checks or receipts and relevant correspondence.)*

* See Attachments reference to June 18, 2009 Complaint filed with Commission on Judicial Performance.

(8) If your complaint is about a lawsuit, answer the following, if known:

a. Name of court *(For example, Superior or Municipal Court, and name of the county)*
United States District Court, Southern District of California

b. Title of the suit *(For example, Smith v. Jones)*.
Klat vs. Mitchell Repair Information Company, LLC et al

c. Case number of the suit 08-cv-1907

d. Approximate date the suit was filed October 16, 2008

e. If you are not a party to this suit, what is your connection with it? Explain briefly.
I am the party (Plaintiff) in this lawsuit

(9) Size of law firm complained about:

1 Attorney ___ 2 – 10 Attorneys ___ 11 + Attorneys ___
Government Attorney ___ Unknown ___ Does not apply

***NOTE:*** *If you are complaining about more than one attorney, include the information requested in items #3 through #8. Use separate sheets if necessary.*

Signature Susan R. Klat

* Enclosures – Bar Membership # information
– Rules of Professional Conduct and Article 7, 11 of the State Bar Act.
– Complaint w/ Attachments to commission on judicial performance filed on June 18, 2009
– Report and Recommendation

Mail to:
**Office of the Chief Trial Counsel/Intake**
**The State Bar of California**
**1149 South Hill Street**
**Los Angeles, California 90015-2299**

# THE STATE BAR OF CALIFORNIA

Thursday, June 18, 2009



## ATTORNEY SEARCH

### Cathy Ann Bencivengo - #138791

#### Current Status: Active

This member is active and may practice law in California

See below for more details.

#### Profile Information

| | | | |
|---|---|---|---|
| **Bar Number** | 138791 | | |
| **Address** | United States District Court<br>940 Front St<br>San Diego, CA 92101 | **Phone Number** | (619) 557-7688 |
| | | **Fax Number** | (619) 702-9991 |
| | | **e-mail** | Cathy_Ann_Bencivengo@casd.uscourts.gov |
| **District** | District 9 | **Undergraduate School** | Rutgers Univ, NJ |
| **County** | San Diego | **Law School** | Univ of Michigan Law Sch., Ann Arbor MI |
| **Sections** | None | | |

#### Status History

| Effective Date | Status Change |
|---|---|
| *Present* | Active |
| 12/7/1988 | Admitted to The State Bar of California |

Explanation of member status

#### Actions Affecting Eligibility to Practice Law

**Disciplinary and Related Actions**
This member has no public record of discipline.

**Administrative Actions**
This member has no public record of administrative actions.

Start New Search >

 © 2009 The State Bar of California

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FILED

JUL 31 2009

MOLLY C. DWYER, CLERK OF COURT
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| SUSAN V. KLAT,<br><br>Plaintiff - Appellant,<br><br>v.<br><br>MITCHELL REPAIR INFORMATION COMPANY, LLC; SNAP-ON INCORPORATED,<br><br>Defendants - Appellees | No. 09-56103<br><br>D.C. No. 3:08-cv-01907-JM-CAB<br>Southern District of California,<br>San Diego<br><br>**ORDER** |

A review of the record demonstrates that this appeal may be appropriate for summary disposition because the questions on which the decision in the appeal depends may be so insubstantial as not to justify further proceedings. *See* 9th Cir. R. 3-6. Within 21 days after the date of this order, appellant shall show cause why the judgment in this appeal should not be summarily affirmed. Appellees may file a reply to appellant's response within ten days from service of the response. Appellant's failure to comply with this order shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. 9th Cir. R. 42-1.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

By: Joe Williams
Deputy Clerk

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# Supreme Court of the United States
# Office of the Clerk
# Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479 3011

August 18, 2009

Ms. Susan V. Klat
P.O. Box 1442
Poway, CA 92074

Re: In Re Susan V. Klat, Petitioner
No. 09-204

Dear Ms. Klat:

The petition for a writ of mandamus and/or prohibition in the above entitled case was filed on August 15, 2009 and placed on the docket August 18, 2009 as No. 09-204.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

William K. Suter, Clerk

by

Gail Johnson
Case Analyst

Enclosures

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No. 09-204
Title: In Re Susan V. Klat, Petitioner
v.
Docketed: August 18, 2009

| Date | Proceedings and Orders |
|---|---|
| Aug 15 2009 | Petition for a writ of mandamus and/or prohibition filed. (Response due September 17, 2009) |

| Name | Address | Phone |
|---|---|---|
| **Attorneys for Petitioner:** | | |
| Susan V. Klat | P.O. Box 1442<br>Poway, CA 92074 | (760) 420-7218 |

Party name:

29

Susan V. Klat
P.O. Box 1442
Poway, California 92074
Telephone # (760) 420-7218
Facsimile # (619) 440-5598

Plaintiff/Appellant in Propria Persona

RECEIVED
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS
AUG 21 2009
FILED
DOCKETED
DATE INITIAL

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ORIGINAL

| | |
|---|---|
| SUSAN V. KLAT, | No. 09-56103 |
| *Plaintiff-Appellant,* | DC No. 08-cv-1907 JM (CAB) (S. D. California, San Diego) |
| -vs.- | |
| MITCHELL REPAIR INFORMATION COMPANY, LLC and SNAPON INCORPORATED, | APPELLANT RESPONSE TO ORDER TO SHOW CAUSE; 9TH CIRCUIT RULE 3-6 |
| *Defendants – Appellees.* | |

In accordance with this Court's Order issued on July 31, 2009 pursuant to 9th Circuit Rule 3-6 thereby directing the plaintiff/appellant to respond by way of order to show cause as to why the appeal in the above-entitled case should not be dismissed in lieu of proceeding by way of timing schedule order with customary briefing as originally assigned on July 16, 2009 discussion is presented as follows:

On July 27, 2009 a docketing statement associated with the July 16, 2009 notice of appeal was received by the court of appeals with a general outline consisting of three questions relevant to the nature underlying the sought review which encompassed: 1) Whether the district court's controlled usage and order mandating an appearance verses use of alternative means to conduct a deposition is supported by the written record and initiating defense; and, if so, whether this order to "appear" is an abuse of Fed. R. Civil P. Rule 30 provisions and corresponding state law; 2) whether the all inclusive pretrial orders instituted prejudiced the plaintiff position to receive fair review; and 3) whether the magistrate findings could be adopted by the district court judge given the Title 28 U.S.C. § 454 provisions in effect, which clearly prohibit a performing officer of the court from holding an active license with the State Bar while rendering an opinion consistent with that of an eligible attorney practicing law.

Following receipt of this statement and seemingly not understanding the dynamics underlying the statute cited (Title 28 U.S.C. § 454) in addition to a federal court's limitations of a deposition proceeding contained to the use of

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[1] A copy of this petition for extraordinary writ filed in the United States Supreme Court on August 17, 2009 is attached to this order to show cause return to both support the reasons to allow this appeal to proceed as well as give the reader a briefing of the history surrounding the events leading to the reason this matter is being pursued by way of appeal.

claims and defenses verses the wide spread use exercised in the state forum, the court issued an order utilizing the 9th circuit's local rule 3-6, relying on the language, "review of the record demonstrates this appeal may appropriate for summary disposition..." and without the presence of the district court record in mention to summon this direction prompting the appellant to seek intervention through a Petition for an Extraordinary Writ with the Supreme Court to ensure the material would in fact have access and opportunity to the appropriate review thereby being requested by way of appeal.[1] (See Attachment Exhibit A, entitled "Petition for Extraordinary Writ to the Ninth Circuit Court of Appeals" received for filing in the United States Supreme Court on August 17, 2009.)

**A. Nature of Order to Show Cause Procedure.**

Utilizing this court's standards, it has been held that an order to show cause is a mechanism allowing the court to obtain responses from parties on the issues relevant to the appeal. Accordingly, using this wording and guideline, without any material or record --- other than the notice of appeal and docketing statement being presented --- this procedural request demanding the appellant prove to this court worthiness of the merits underlying this appeal (and without the required brief and or record to support an argument) this order cannot be sustained minus the necessary foundation given that jurisdiction and proper fees have been

appropriately initiated, and because no other criteria applies to prompt the court to dispose of this appeal in the matter that is being portrayed.

**B. Standards for Summary Disposition.**

Again, when reviewing this court's standards as they apply to a summary disposition not otherwise prompted by a motion or "other" related proceeding, it has been decided in the past that a summary affirmance is appropriate only where it is "manifest that the questions on which the decision of the appeal depends are so insubstantial as to not to justify further proceedings."[Circuit Rule 3–6(b)]; *United* States v. Hooton, supra 693 F.2d at 858 --- district court's affirmance denial of appellant motion for reduction of sentence summarily affirmed where "insubstantially of the appeal" appeared on the "face of the appellant's brief."] However, given that there is no appellant opening brief, no record and no precipitating motion to support this order's current demand an appellant should not have to be held to a standard to prove to this Court why they should be allowed to proceed on appeal without the customary briefing assigned to secure the "de nova" review being sought by way of appeal.

**C. Importance of the Underlying Material Prompting the Review.**

As stated above, an order to show cause (minus the precipitating brief w/supporting record) does not suggest or provide the necessary avenue or opportunity needed to proffer an explanation; nor does it justify the court labeling

the questions presented in the docketing statement as "insubstantial" simply because the material lacks the necessary rationalization required to dispense with the underlying reasons prompting the foregoing decisions to be reviewed "de nova" by way of appeal. However, it does raise the level of inquisition underlying the initial decisions as well as the importance of the questions behind the scenes having prompted the review in the first instance.

For time sake, setting aside the first two questions presented in the docketing statement since review of this material requires access to the written record to make an informed decision concerning relevance to the appeal, the material question of foremost importance which mandates this appeal proceed as originally scheduled involves the usage of Title 28 U.S.C. § 454 in light of the numerous applications involved. For instance, given that an average district court magistrate judge (which includes overseeing of every criminal proceeding being reviewed by a grand jury before returned and executed at the hands of the individual assigned) attends to a large volume of cases (on a daily basis) with reports and recommendations then accepted following blind adoption by a district court judge (as in this case) this statute (and the question of the adopted usage of this statute alone) requires this Court's sincere attention since this material decision effects the majority of the population and, more importantly, directly

defies legislation since it is inconsistent with the function and reasoning allocated under Article III of the United States Constitution in creation of the courts.

WHEREFORE, for the reasons herein stated, the appellant Susan V. Klat respectfully requests the July 21, 2009 Order to Show Cause be set aside and the July 16, 2009 timing schedule order initially assigned to brief the appeal be reinstated pursuant to Federal Rules of Appellate Procedure protocol.

Dated: August 20, 2009

Respectfully submitted,

SUSAN KLAT
Appellant in Propria Persona

P.O. Box 1442
Poway, California 92074
Telephone: 760-420-7218
Facsimile: 619-440-5598

LATHAM & WATKINS LLP
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Attorneys for Appellees
Mitchell Repair Information Company, LLC and
Snap-on Incorporated

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| SUSAN V. KLAT,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>MITCHELL REPAIR INFORMATION COMPANY, LLC and SNAP-ON INC.<br><br>Defendants-Appellees. | No. 09-56103<br><br>D.C. No. 3:08-cv-01907-JM-CAB<br>Southern District of California,<br>San Diego<br><br>**APPELLEES' REPLY TO APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE** |

On July 31, 2009, the Court issued an order to show cause why the judgment in this appeal should not be summarily affirmed. Appellant Susan V. Klat filed her Response on August 20, 2009. Appellees Mitchell Repair Information Co., LLC and Snap-on Inc. hereby file this Reply to Ms. Klat's Response, in accordance with the Court's July 31, 2009 order.

The precise nature of Ms. Klat's appeal is not entirely clear. However, she appears to be arguing that (1) Appellees were not entitled to depose her in-person under the Federal Rules of Civil Procedure; (2) Ms. Klat's apparent Supreme Court filing somehow relates to this appeal; and (3) the district judge and/or magistrate judge improperly engaged in the practice of law in violation of 28 U.S.C. § 454.

None of Ms. Klat's contentions are remotely colorable, and she has failed to show that this appeal has any substance. First, the Federal Rules of Civil Procedure provide that a party

should be deposed in person, unless good cause is shown. *See* Fed. R. Civ. P. 30(b)(4). Ms. Klat has failed to articulate any rational basis for her apparent position that the district court's order compelling her appearance at deposition was "an abuse of Fed. R. Civil P. Rule 30 provisions and corresponding state law." (Response at 2.) Second, Ms. Klat's apparent Supreme Court filing has no relevance to this proceeding. Although it is attached to her Response, Appellants respectfully contend that the filing in fact demonstrates that this appeal is frivolous. Third, Ms. Klat's allegations regarding unauthorized practice of law lack substance. Indeed, this issue was not addressed in the district court, and it is completely foreign to this proceeding. She appears to argue that district judges blindly adopt magistrate judge recommendations, that this prejudices "the majority of the population" (Response at 5), and that this practice somehow constitutes the unauthorized practice of law. This argument has no basis.

Given that Ms. Klat's appeal lacks substance on its face, the Court should summarily affirm the judgment in this matter pursuant to Ninth Circuit Rule 3-6.

Dated: August 28, 2009

LATHAM & WATKINS LLP
Joseph B. Farrell
Peter J. Brachman

By /s/ Peter J. Brachman
Peter J. Brachman
Attorneys for Defendants-Appellees
Mitchell Repair Information Company, LLC
and Snap-on Inc.

**PROOF OF SERVICE**

I hereby certify that on August 28, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

Susan Klat
P.O. Box 1442
Poway, California 92074

/s/ Peter J. Brachman
Peter J. Brachman

FILED

SEP 01 2009

MOLLY C. DWYER, CLERK OF COURT
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SUSAN V. KLAT,

Plaintiff - Appellant,

v.

MITCHELL REPAIR INFORMATION COMPANY, LLC; SNAP-ON INCORPORATED,

Defendants - Appellees.

No. 09-56103
D.C. No. 3:08-cv-01907-JM-CAB
Southern District of California,
San Diego

**ORDER**

A review of the file in this case reveals that the appellant has failed to perfect the appeal as prescribed by the Federal Rules of Appellate Procedure.

Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to respond to the order of this court dated July 31, 2009.

A copy of this order sent to the district court shall constitute the mandate of this court.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court
By: Robert Sansone
Deputy Clerk

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| SUSAN v. KLAT,<br><br>Plaintiff - Appellant,<br><br>v.<br><br>MITCHELL REPAIR INFORMATION COMPANY, LLC; et al.,<br><br>Defendants - Appellees. | No. 09-56103<br><br>D.C. No. 3:08-cv-01907-JM-CAB<br>Southern District of California,<br>San Diego<br><br>ORDER |

This Court's previous order, filed on September 1, 2009, dismissing the case for failure to prosecute was done in error and is hearby vacated. Appellant responded to the order to show cause on August 21, 2009. This case is reinstated.

All pending motions will be addressed by separate order.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT
By: Robert Sansone
Deputy Clerk

RS/Research

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SEP 15 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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|---|---|
| SUSAN V. KLAT,<br><br>Plaintiff - Appellant,<br><br>v.<br><br>MITCHELL REPAIR INFORMATION COMPANY, LLC; et al.,<br><br>Defendants - Appellees. | No. 09-56103<br><br>D.C. No. 3:08-cv-01907-JM-CAB<br>Southern District of California,<br>San Diego<br><br>ORDER |

Before: PREGERSON, TASHIMA and N.R. SMITH, Circuit Judges.

A review of the record and the response to the July 31, 2009 order to show cause indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, we summarily affirm the district court's judgment.

**AFFIRMED.**

SVG/Pro Se

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APPEAL, CLOSED, ENF

**U.S. District Court**
**Southern District of California (San Diego)**
**CIVIL DOCKET FOR CASE #: 3:08-cv-01907-JM-CAB**

lat v. Mitchell Repair Information Company, LLC et al
ssigned to: Judge Jeffrey T. Miller
eferred to: Magistrate Judge Cathy Ann Bencivengo
emand: $4,000
ase in other court: USCA, 09-56103
ause: 29:206 Collect Unpaid Wages

Date Filed: 10/16/2008
Date Terminated: 07/14/2009
Jury Demand: None
Nature of Suit: 790 Labor: Other
Jurisdiction: Federal Question

**laintiff**

**usan V Klat**

represented by **Susan V Klat**
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*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**efendant**

**nap-On Incorporated**

represented by **Joseph B Farrell**
(See above for address)
*LEAD ATTORNEY*

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*ATTORNEY TO BE NOTICED*

**Peter Jay Brachman**
(See above for address)
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

| Date Filed | # | Docket Text |
|---|---|---|
| 10/16/2008 | 1 | Verified COMPLAINT against Mitchell Repair Information Company, LLC, and Snap-On Incorporated (Filing fee $350 paid; receipt number 156183) filed by Susan V Klat.(lao) (Additional attachment(s) added on 10/27/2008: # 1 MAIN DOCUMENT) (ecl). Modified on 10/27/2008 to replace civil cover sheet with legible version (ecl). (kaj). (Entered: 10/20/2008) |
| 10/16/2008 | 2 | Summons Issued as to Mitchell Repair Information Company, LLC, and Snap-On Incorporated. (lao) (kaj). (Entered: 10/20/2008) |
| 12/29/2008 | 3 | ANSWER to 1 Complaint, *ANSWER TO VERIFIED COMPLAINT* by Mitchell Repair Information Company, LLC, Snap-On Incorporated. (Attachments: # 1 Proof of Service) (Farrell, Joseph) (tkl). (Entered: 12/29/2008) |
| 12/29/2008 | 4 | NOTICE of Party With Financial Interest by Mitchell Repair Information Company, LLC, Snap-On Incorporated *Notice of Party with Financial Interest Pursuant to Local Civil Rule 40.2* (Attachments: # 1 Proof of Service)(Farrell, Joseph) (tkl). (Entered: 12/29/2008) |
| 12/29/2008 | 5 | Corporate Disclosure Statement by Mitchell Repair Information Company, LLC, Snap-On Incorporated. (Attachments: # 1 Proof of Service)(Farrell, Joseph) (tkl). (Entered: 12/29/2008) |
| 12/30/2008 | 6 | Notice and Order for Early Neutral Evaluation Conference. Early Neutral Evaluation set for 2/12/2009 02:00 PM in Courtroom E before Magistrate Judge Cathy Ann Bencivengo. Signed by Magistrate Judge Cathy Ann Bencivengo on 12/30/08. (All non-registered users served via U.S. Mail Service).(tkl) (Entered: 12/30/2008) |
| 01/13/2009 | 7 | SUMMONS Returned Executed as to Mitchell Repair Information Company, LLC. on 12/30/08 (tkl) (Entered: 01/13/2009) |
| 02/02/2009 | 8 | Notice of Document Rejecting Document: Letter from Susan V Klat. Non-compliance with local rule(s), OTHER: ex parte communication is prohibited. IT IS HEREBY ORDERED: The document is NOT to be filed, but instead REJECTED and it is ORDERED that the Clerk serve a copy of this order on all parties. Counsel is advised that any further failure to comply with the Local Rules may lead to penalties pursuant to Local Rule 83.1, Rejected document was returned to the filer. Signed by the Chambers of Magistrate Judge Cathy Ann Bencivengo on 2/2/09. (All non-registered users served via U.S. Mail Service).(tkl) (Entered: 02/03/2009) |
| 02/12/2009 | 9 | Minute Entry for proceedings held before Magistrate Judge Cathy Ann Bencivengo:Early Neutral Evaluation Conference held on 2/12/2009. The case did not settle. Order to follow. (mgl) (Entered: 02/12/2009) |
| 02/12/2009 | 10 | ORDER following ENE Conference, setting Rule 26 compliance and notice of Case Management Conference. On February 12, 2009, the Court held an Early Neutral Evaluation Conference. Telephonic Case Management Conference set for 4/2/2009 01:30 PM in |

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| | | Courtroom E before Magistrate Judge Cathy Ann Bencivengo. Signed by Magistrate Judge Cathy Ann Bencivengo on 2/12/09. (All non-registered users served via U.S. Mail Service). (tkl) (Entered: 02/13/2009) |
| 04/02/2009 | 11 | Minute Entry for proceedings held before Magistrate Judge Cathy Ann Bencivengo: Case Management Conference held on 4/2/2009. Order to follow. (mgl) (Entered: 04/02/2009) |
| 04/02/2009 | 12 | CASE MANAGEMENT CONFERENCE ORDER REGULATING DISCOVERY AND OTHER PRETRIAL PROCEEDINGS. A Case Management Conference was held on April 2, 2009. Mandatory Settlement Conference set for 12/18/2009 10:00 AM in Courtroom E before Magistrate Judge Cathy Ann Bencivengo. Final Pretrial Conference set for 4/2/2010 08:30 AM in Courtroom 16 before Judge Jeffrey T. Miller. Trial set for 5/3/2010 10:00 AM in Courtroom 16 before Judge Jeffrey T. Miller. Memorandum of Contentions of Fact and Law due by 3/12/2010. Proposed Pretrial Order due by 3/26/2010. Signed by Magistrate Judge Cathy Ann Bencivengo on 4/2/09. (All non-registered users served via U.S. Mail Service). (tkl) (jrl). (Entered: 04/03/2009) |
| 04/15/2009 | 13 | Notice of Document Discrepancy Accepting Document: Notice of Objection from Susan V Klat. Non-compliance with local rule(s). OTHER: 7.1 or 47.1. IT IS HEREBY ORDERED: The document is to be filed nunc pro tunc to date received.. Signed by the Chambers of Judge Jeffrey T. Miller on 4/14/09. (All non-registered users served via U.S. Mail Service).(tkl) (Entered: 04/15/2009) |
| 04/15/2009 | 14 | Notice of OBJECTION and objection to Magistrate Case Conference Order regulating discovery and other Pretrial proceedings for insufficient findings; memorandum of points and authorities w/ exhibits A F in support thereof by Susan V Klat; nunc pro tunc 4/13/09 (All non-registered users served via U.S. Mail Service).(tkl) (Entered: 04/15/2009) |
| 04/15/2009 | 15 | CERTIFICATE OF SERVICE by Susan V Klat re 14 Notice of Objection; nunc pro tunc 4/13/09. (tkl) (Entered: 04/15/2009) |
| 04/15/2009 | 16 | ORDER signed by Judge Jeffrey T. Miller on 4/15/09. The court orders Defendants to file and serve any response to Plaintiff's objections no later than April 22, 2009.(All non-registered users served via U.S. Mail Service).(tkl) (jrl). (Entered: 04/16/2009) |
| 04/20/2009 | 17 | NOTICE by Mitchell Repair Information Company, LLC, Snap-On Incorporated re 14 Objection, *to Magistrate Case Conference Order (Response)* (Attachments: # 1 Proof of Service)(Brachman, Peter). Modified on 4/21/2009 (tkl). Emailed atty re S/ on proof of service. (Entered: 04/20/2009) |
| 04/20/2009 | 18 | DECLARATION re 17 Notice (Other) *of Peter J. Brachman* by Defendants Mitchell Repair Information Company, LLC, Snap-On Incorporated. (Attachments: # 1 Proof of Service) (Brachman, Peter). Modified on 4/21/2009 (tkl). Emailed atty re S/ on proof of service. (Entered: 04/20/2009) |
| 04/28/2009 | 19 | ORDER signed by Judge Jeffrey T. Miller on 4/28/09. The court overrules Plaintiff's objections to the Case Management Conference Order.(All non-registered users served via U.S. Mail Service).(tkl) (jrl). (Entered: 04/28/2009) |
| 04/29/2009 | 20 | Ex Parte MOTION to Compel *Attendance at Deposition and for Sanctions* by Mitchell Repair Information Company, LLC, Snap-On Incorporated. (Attachments: # 1 Declaration of Peter J. Brachman, # 2 Exhibit A, # 3 Exhibit B)(Brachman, Peter) (tkl). (Entered: 04/29/2009) |
| 04/29/2009 | 21 | ORDER setting briefing schedule for Defendants' Motion to compel. Plaintiff is ordered to |

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| | | file an Opposition to the motion, if any, no later than May 6, 2009, at which time the Court will take the matter under submission. Signed by Magistrate Judge Cathy Ann Bencivengo on 4/29/09. (All non-registered users served via U.S. Mail Service).(lao) (jrl). (Entered: 04/29/2009) |
| 05/06/2009 | 22 | Opposition to Defendants Ex Parte 20 Motion to Compel Attendance at Deposition and for Sanctions; memorandum of points and authorities filed by Susan V Klat. (Attachments: # 1 Declaration Susan V. Klat, # 2 Proof of Service)(tkl) (Entered: 05/06/2009) |
| 05/06/2009 | 23 | ORDER granting Defendants' motion to compel Plaintiff's deposition and Defendants' request for sanctions is denied without prejudice. Signed by Magistrate Judge Cathy Ann Bencivengo on 5/6/09. (All non-registered users served via U.S. Mail Service).(tkl)(jrl). (Entered: 05/07/2009) |
| 05/11/2009 | 24 | Notice of objection and objection to Magistrate Judge Findings and Order to compel plaintiff's attendance at deposition 23 by Susan V Klat 23 .(tkl) (Entered: 05/13/2009) |
| 05/11/2009 | 25 | DECLARATION re 24 Notice of Objection by Plaintiff Susan V Klat. (tkl) (Entered: 05/13/2009) |
| 05/11/2009 | 26 | CERTIFICATE OF SERVICE by Susan V Klat re 24 Notice of Objection and 25 Declaration (tkl) (Entered: 05/13/2009) |
| 05/15/2009 | 27 | ORDER signed by Judge Jeffrey T. Miller on 5/15/09. The court orders Defendants to file and serve any response to Plaintiff's objections no later than May 22, 2009.(All non-registered users served via U.S. Mail Service).(tkl) (jrl). (Entered: 05/15/2009) |
| 05/19/2009 | 28 | RESPONSE re 24 Objection *to Magistrate Judge Order* filed by Mitchell Repair Information Company, LLC, Snap-On Incorporated. (Brachman, Peter). Modified on 5/20/2009 (tkl). Emailed atty re S/ on proof of service. (Entered: 05/19/2009) |
| 05/19/2009 | 29 | DECLARATION re 28 Response - Other *to Objection to Magistrate Judge Order (Peter J. Brachman)* by Defendants Mitchell Repair Information Company, LLC, Snap-On Incorporated. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D) (Brachman, Peter) (tkl). (Entered: 05/19/2009) |
| 05/20/2009 | 30 | MOTION (filed as Ex-Parte application) to Compel defendant disclosure and/or Production of wage related documents and for Sanctions by Susan V Klat. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration Susan V. Klat, # 3 Proof of Service)(tkl) (Entered: 05/21/2009) |
| 05/21/2009 | 31 | Minute Entry: On May 20, 2009, Plaintiff filed a motion to compel production of wage related documents. [Doc. No. 30.] Defendant shall file an opposition to the motion, if any, no later than June 3, 2009. (mgl) (Entered: 05/21/2009) |
| 05/27/2009 | 32 | ORDER signed by Judge Jeffrey T. Miller on 5/27/09. The court overrules Plaintiff's objections to the May 6, 2009 Order of Magistrate Judge Bencivengo and any findings therein. The Order is affirmed. The matter is referred back to Magistrate Judge Bencivengo for a Report and Recommendations regarding imposition of sanctions for Plaintiff's failure to comply with the Order of May 6, 2009 requiring her submission to a deposition and for further discovery issues.(All non-registered users served via U.S. Mail Service).(tkl)(jrl). (Entered: 05/27/2009) |
| 05/28/2009 | 33 | Minute Entry: A telephonic Status Conference is set for 6/3/2009, at 01:30 PM before |

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| | | Magistrate Judge Cathy Ann Bencivengo. Counsel for Defendants shall coordinate and initiate the call. (mgl) (Entered: 05/28/2009) |
| 6/03/2009 | 34 | RESPONSE in Opposition re 30 MOTION to Compel MOTION to Produce MOTION for Sanctions filed by Mitchell Repair Information Company, LLC, Snap-On Incorporated. (Attachments: # 1 Proof of Service)(Brachman, Peter) (tkl). (Entered: 06/03/2009) |
| 6/03/2009 | 35 | DECLARATION re 34 Response in Opposition to Motion by Defendants Mitchell Repair Information Company, LLC, Snap-On Incorporated. (Attachments: # 1 Proof of Service) (Brachman, Peter) (tkl). (Entered: 06/03/2009) |
| 6/04/2009 | 36 | REPORT AND RECOMMENDATIONS re discovery sanctions 30 . This Court recommends the matter be dismissed with prejudice due to Plaintiff's refusal to comply with Court orders and the Federal Rules of Civil Procedure on fundamental discovery. Signed by Magistrate Judge Cathy Ann Bencivengo on 6/4/09. (All non-registered users served via U.S. Mail Service).(tkl) (jrl). (Entered: 06/04/2009) |
| 6/17/2009 | 37 | OBJECTION to 36 Report and Recommendations by Susan V Klat. (Attachments: # 1 Declaration Susan V. Klat, # 2 Proof of Service)(tkl) (Entered: 06/18/2009) |
| 6/22/2009 | 38 | REPLY - Other re 37 Objection to Report and Recommendations filed by Mitchell Repair Information Company, LLC, Snap-On Incorporated. (Attachments: # 1 Proof of Service) (Brachman, Peter)(tkl). (Entered: 06/22/2009) |
| 7/13/2009 | 39 | ORDER ADOPTING REPORT AND RECOMMENDATIONS. Accordingly, the action is hereby dismissed with prejudice. The Clerk of Court is instructed to close the case file.Signed by Judge Jeffrey T. Miller on 7/13/09. (All non-registered users served via U.S. Mail Service).(tkl) (kaj). (Entered: 07/14/2009) |
| 7/14/2009 | 40 | CLERK'S JUDGMENT - the court adopts the Report and Recommendation in its entirety. Accordingly, the action is hereby dismissed with prejudice. (All non-registered users served via U.S. Mail Service).(tkl) (kaj). (Entered: 07/14/2009) |
| 7/15/2009 | 41 | NOTICE OF APPEAL as to 40 Clerk's Judgment, 39 Order Adopting Report and Recommendations, by Susan V Klat. (Filing Fee: Paid, Receipt No. CAS003030). (Notice of Appeal electronically transmitted to US Court of Appeals.) (akr) (Entered: 07/16/2009) |
| 7/16/2009 | 42 | USCA Case Number 09-56103 for 41 Notice of Appeal filed by Susan V Klat. (akr) (Entered: 07/16/2009) |
| 7/16/2009 | 43 | USCA Time Schedule Order as to 41 Notice of Appeal filed by Susan V Klat. (akr) (Entered: 07/16/2009) |
| 7/27/2009 | 44 | NOTICE of Transcript Designation and Ordering Form filed by Susan V Klat re 41 Notice of Appeal. (akr) (Entered: 07/27/2009) |
| 7/31/2009 | 45 | ORDER of USCA as to 41 Notice of Appeal filed by Susan V Klat. A review of the record demonstrates that this appeal may be appropriate for summary disposition because the questions on which the decision in the appeal depends may be so insubstantial as not to justify further proceedings. Within 21 days after the date of this order, appellant shall show cause why the judgment in this appeal should not be summarily affirmed. Appellees may file a reply to appellant's response within ten days from service of the response. Appellant's failure to comply with this order shall result in the automatic dismissal of this appeal by the USCA Clerk for failure to prosecute. (akr) (Entered: 07/31/2009) |

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| 09/01/2009 | 46 | VACATED per 47 Order of USCA: ORDER of USCA as to 41 Notice of Appeal filed by Susan V Klat. A review of the file in this case reveals that the appellant has failed to perfect the appeal as prescribed by the FRAP. Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to respond to the order of the USCA dated 7/31/2009. A copy of this order sent to the USDC shall constitute the mandate of the USCA. (akr). Modified on 9/15/2009 to note that this USCA Order has been vacated. (akr). (Entered: 09/01/2009) |
| 09/08/2009 | 47 | ORDER of USCA as to 41 Notice of Appeal filed by Susan V Klat. The USCA's previous order, filed on 9/1/2009, dismissing the case for failure to prosecute was done in error and is hereby vacated. Appellant responded to the order to show cause on 8/21/2009. This appeal is reinstated. All pending motions will be addressed by separate order. (akr) (Entered: 09/15/2009) |
| 09/15/2009 | 48 | ORDER of USCA as to 41 Notice of Appeal filed by Susan V Klat. A review of the record and the response to the 7/31/2009 order to show cause indicates that the questions raised in this appeal are so insubstantial as not to require further argument. Accordingly, the USCA summarily affirms the USDC's judgment. (akr) (Entered: 09/15/2009) |

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| Billable Pages: | 5 | Cost: | 0.40 |

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**General Docket**
**United States Court of Appeals for the Ninth Circuit**

**Court of Appeals Docket #:** 09-56103 **Docketed:** 07/16/2009
**Nature of Suit:** 3790 Other Labor Litigation **Termed:** 09/15/2009
Susan Klat v. Mitchell Repair Information Co, et al
**Appeal From:** US District Court for Southern California, San Diego

**Case Type Information:**
1) civil
2) private
3) null

**Originating Court Information:**
**District:** 0974-3 : 3:08-cv-01907-JM-CAB
**Trial Judge:** Jeffrey T. Miller, U.S. District Judge
**Date Filed:** 10/16/2008

| Date Order/Judgment: | Date Order/Judgment EOD: | Date NOA Filed: | Date Rec'd COA: |
|---|---|---|---|
| 07/14/2009 | 07/14/2009 | 07/15/2009 | 07/16/2009 |

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| 07/16/2009 | 1 | DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL AND PROSE APPELLANT. The schedule is set as follows: Transcript order for Appellant Susan V. Klat due 08/14/2009. Transcript due for Orig Clerk USDC, San Diego on 09/14/2009. Certificate of record due 09/21/2009. Appellant Susan V. Klat opening brief due 10/30/2009. Appellee Mitchell Repair Information Company, LLC and Appellee Snap-On Incorporated answering brief due 11/30/2009. Appellant's optional reply brief is due 14 days after service of the answering brief. [6994061] (GR) |
| 07/27/2009 | 2 | Filed Appellant Susan V. Klat Civil Appeals Docketing Statement. Served on 07/24/2009. [7004614] (EL) |
| 07/31/2009 | 3 | Filed clerk order (Deputy Clerk:JW):A review of the record demonstrates that this appeal may be appropriate for summary disposition because the questions on which the decision in the appeal depends may be so insubstantial as not to justify further proceedings. See 9th Cir. R. 3-6. Within 21 days after the date of this order, appellant shall show cause why the judgment in this appeal should not be summarily affirmed. Appellees may file a reply to appellant's response within ten days from service of the response. Appellant's failure to comply with this order shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute 9th Cir. R. 42-1. [7010992] (JW) |
| 08/17/2009 | 4 | ENTRY UPDATED. Received Appellant Susan V. Klat 's 3 copies of a petition for an extraordinary Writ of Mandamus filed in the Supreme Court [7031932] [7031932] (EL) |
| 08/21/2009 | 5 | Filed Appellant Susan V. Klat's response to order to show cause. Served on 08/20/2009. [7036936] (EL) |
| 08/24/2009 | 6 | Received Appellant Susan V. Klat 3 copies of Supreme Court's notice that a petition for writ of mandamus was filed on 8/15/09 and placed on the docket 8/18/09. [7043262] (EL) |
| 08/28/2009 | 7 | Filed (ECF) Appellees Mitchell Repair Information Company, LLC and Snap-On Incorporated reply to response to order to show cause dated 07/31/2009. Date of service: 08/28/2009. [7044402] (PJB) |
| 09/01/2009 | 8 | Order filed (Deputy Clerk. RS) Dismissing case for failure to prosecute (Cir. Rule 42-1) Pursuant to Ninth Rule 42-1, this appeal is dismissed for failure to respond to order of this court dated July 31, 2009. This order served on the district court shall act as and for the mandate of this court. [7047548] (RS) |
| 09/08/2009 | 9 | Filed clerk order (Deputy Clerk:RS): This Court's previous order, filed on September 1, 2009, dismissing the case for failure to prosecute was done in error and is hearby vacated. Appellant responded to the order to show cause on August 21, 2009. This case is reinstated. All pending motions will be addressed by separate order. [7054895] (RS) |
| 09/15/2009 | 10 | Order filed (HARRY PREGERSON, A. WALLACE TASHIMA and N. RANDY SMITH) A review of the record and the response to the July 31, 2009 order to show cause indicates that the questions raised in this appeal are so insubstantial as not to require further argument. See United States v. Hooton, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Accordingly, we summarily affirm the district court's judgment. AFFIRMED. [7061514] (SC) |

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